SENATE—*Wednesday, February 3, 1993*

(Legislative day of Tuesday, January 5, 1993)

The Senate met at 9:15 a.m., on the expiration of the recess, and was called to order by the President pro tempore [Mr. BYRD].

The PRESIDENT pro tempore. The prayer will be led by the Senate Chaplain, the Reverend Richard C. Halverson.

Dr. Halverson.

PRAYER

The Chaplain, the Reverend Richard C. Halverson, D.D., offered the following prayer:

Let us pray:

Gracious Father in Heaven, we pray for those whose lives have been altered by the transition in Government—those who must find a new job and a new home. We take comfort in Your word to Jeremiah, "For I know the thoughts that I think toward you, saith the Lord, thoughts of peace, and not of evil, to give you an expected end."

Be with those experiencing difficulty in finding a new job. Bless the families as they adjust to a new home and their children as they find their way in a new school.

We pray also, loving Father, for all of the new people on Senate staffs. May their adjustment time be brief and satisfying. Bless the new Senators as they find their way through rules and traditions characteristic of this very powerful institution.

Thank you, Lord, for Your gracious care and provision for all who trust You and look to You.

In Jesus' name, who is love incarnate. Amen.

RECOGNITION OF THE MAJORITY LEADER

The PRESIDENT pro tempore. Under the previous order, the majority leader is recognized.

WELCOME BACK TO REVEREND HALVERSON

Mr. MITCHELL. Mr. President, I know that I speak for all Members of the Senate when I express our gratitude of his presence this morning and the delivery of the prayer by our esteemed Senate Chaplain, Dr. Halverson. We welcome Dr. Halverson back and look forward to serving with him for some time to come.

THE JOURNAL

Mr. MITCHELL. Mr. President, am I correct in my understanding that the Journal of proceedings has been approved to date?

The PRESIDENT pro tempore. The majority leader is correct.

SCHEDULE

Mr. MITCHELL. Mr. President, and Members of the Senate, there will be a period for morning business until 9:30 a.m., at which time the Senate will return to the consideration of the Family and Medical Leave Act. A minimum of one and a maximum of three votes are set to commence at 10 a.m. The uncertainty results from negotiations that were continuing last evening involving an amendment offered by the distinguished Senator from Washington. And I notice his presence on the floor.

Mr. GORTON. Will the majority leader yield?

Mr. MITCHELL. Yes.

Mr. GORTON. I think it would be more accurate to say a minimum of two. At least one of the amendments the Senator will offer will require a rollcall. We hope we can avoid a third.

Mr. MITCHELL. I thank my colleague.

Mr. President, Senators should be aware that at least two votes will occur at 10 a.m., with a possibility of a third. That remains yet to be resolved. And then the Senate will continue on the measure today.

This is a very important bill. It is my hope and intention that we can complete action on the bill as soon as possible. As I have stated publicly on several previous occasions, it is also my hope that this week we can also complete action on the reauthorization bill for the National Institutes of Health and for a resolution regarding the situation in Somalia, which Senator DOLE and I have been working on and which we expect to introduce together following completion of action on the NIH reauthorization bill.

So, those are the three measures which we hope to complete this week. Rollcall votes are possible throughout the day and into the evening for the remainder of the week—whatever it takes to complete action on the bill.

I thank the managers, the Senator from Connecticut and the Senator from Kansas [Mrs. KASSEBAUM], both of whom who have been very diligent about proceeding with this bill and I thank the Senator from Washington for his cooperation, permitting moving forward on his amendments with dispatch.

RESERVATION OF LEADER TIME

Mr. MITCHELL. Mr. President, I reserve the remainder of my leader time and I reserve all of the leader time of the distinguished Republican leader.

The PRESIDENT pro tempore. Without objection, the remainder of the majority leader's time is reserved and all of the minority leader's time is reserved.

MORNING BUSINESS

The PRESIDENT pro tempore. There will now a period for the transaction of morning business not to extend beyond the time of 9:30 a.m., with Senators permitted to speak therein.

The Senator from Washington [Mr. GORTON] is recognized.

TIMBER SALVAGE SALES

Mr. GORTON. Mr. President, on Monday, the Seattle Post-Intelligencer reported that many wildlife biologists and other environmental activists are coming to the realization that active management of our national timber lands in the Pacific Northwest may actually be beneficial to the health of our forests. The director of former Governor Gardner's timber team, the Washington Environmental Council, and faculty from the University of Washington's Forest Ecology Program now agree that active forest management practices such as thinning stands, and removal of diseased, downed, and dead timber can promote the health of a forest ecosystem.

Last year this Senator offered an amendment to the Interior appropriations bill to facilitate just such management practices. The amendment called for the creation of forest health improvement projects to permit active forest management practices which improve the health of forests. It was not, as some claimed, a stalking horse for renewed, large-scale timber harvesting in the Northwest. By definition, that amendment would allow the appropriate agencies to consider only those practices that would enhance the health of the forest.

I am glad to see that a biologist involved with the drafting of the original Jack Ward Thomas report and supporters of that report are now open to new information. When the report was published, the committee rejected even limited logging unless it could be proven that logging would be beneficial to the health of the spotted owl's habitat.

● This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.

Now, there is a growing consensus that a forest containing huge amounts of downed and dead timber presents a real fire hazard. Neglecting the forest's health may threaten the owl's habitat more than limited thinning and removal of dead timber.

This Senator has always believed that we can improve the habitat for the owl while protecting jobs for the timber dependent communities throughout the Northwest. One biologist is quoted as decrying artificial untouchable conservation areas. I agree. Human beings can and do play a positive role in the environment. Where we can improve the habitat for the spotted owl, we should act appropriately.

This is the ultimate win-win for the spotted owl and for our communities. I hope that the new administration is open to the possibility of implementing these more active forest management practices soon. I look forward to working with the new administration on this issue.

The PRESIDENT pro tempore. The senior Senator from Montana [Mr. BAUCUS] is recognized.

THE NEED FOR ENVIRONMENTAL INFRASTRUCTURE

Mr. BAUCUS. Mr. President, over the past several weeks, the economic news has been decidedly mixed for most Americans. The economy is showing signs of improvement. The gross domestic product is up. So too are housing sales, personal income, and orders for durable goods.

But it is a recovery without many jobs. Corporate layoffs continue by the thousands. And workers still wonder if their company, their job, will be next.

As President Clinton prepares his economic program, it is vital that it address the scarcity of new jobs. That is why a short-term stimulus package centered on job creation is a must.

INFRASTRUCTURE CREATES JOBS

One of the surest ways to create jobs—good jobs—and at the same time improve our economic foundation is by investing in our country's physical infrastructure. It is a job we know needs to be done if we are to have a competitive economy. And it is a job that can bring with it hundreds of thousands of good paying jobs.

Most of us are well acquainted with the advantages of greater investment in highways. Full funding of the Intermodal Surface Transportation Efficiency Act would speed implementation of that landmark legislation. It would bring about jobs, economic growth, and a more efficient transportation network.

But we should not stop with highways and bridges. We expand our vision to our environmental infrastructure, to sewage treatment plants, drinking water systems, and solid waste facilities.

Construction of these facilities creates jobs. But more than that it also protects human health and the environment. And these facilities provide a foundation for local business development.

Earlier this week, the National Governors Association recommended an infrastructure investment program totaling $9.6 billion this year. The program includes $8.4 billion in transportation and environmental projects.

Funding for both transportation and environmental projects will create significant employment benefits in the construction and related trades and provide a major boost to the national economy. Most economists agree that transportation and environmental construction projects generate between 30,000 and 50,000 jobs per $1 billion invested.

If we were to provide $10 billion for transportation and environmental projects, the employment benefit would be between 300,000 and half a million jobs in employment sectors not addressed by other economic stimulus proposals.

While not all these jobs would be created immediately, these projects could begin this year and would provide employment benefits for years to come.

ENVIRONMENTAL INFRASTRUCTURE

There is no doubt about the need to invest in environmental infrastructure. The Environmental Protection Agency has recently provided me with a comprehensive assessment of the amount of such projects. The total costs of the projects that are ready to go this year are almost $30 billion—$12 billion for sewage projects, $14 billion for drinking water, and over $3 billion for solid waste.

These projects would have a tremendous economic benefit to the communities involved and would provide critical protection of public health and the environment.

I also recently received a similar analysis prepared by State water pollution agencies. This survey of States identified a total of $10 billion worth of ready-to-build sewage treatment projects this year and next year.

This State assessment of sewage project needs differs from the EPA assessment in that it does not include many smaller sewer line projects or projects to which Federal loan funds are already targeted.

Mr. President, I ask unanimous consent that a copy of the EPA analysis and the assessment by the States be printed at the end of my remarks.

The PRESIDENT pro tempore. Without objection, it is so ordered.

(See exhibit 1.)

Mr. BAUCUS. Together, these two studies fully document the substantial need for financial assistance for environmental infrastructure projects that are ready-to-go in the short term. Furthermore, by investing environmental infrastructure funds in the existing State revolving loan funds, we help build a financial base in each State which will be a source of financing for years to come—a very important point, particularly for the States.

These vital projects will pay double dividends by creating jobs at the same time they will protect public health and the environment.

HELP WITH RISING COSTS

But there is another important reason for including them as part of any economic stimulus package. Many communities, especially those in rural States, are struggling to build needed environmental facilities without sharp increases in user charges. Some simply may be unable to pay for the needed facilities at all.

Small communities are most at risk. The Environmental Protection Agency estimated in a recent report that the user fees for new water and sewer facilities in 20 percent of the communities under 2,500 persons could more than double within the next 4 years.

DRINKING WATER PROJECTS

The stimulus package also presents an opportunity to expand Federal assistance to drinking water projects, a long overlooked area of environmental infrastructure. As I mentioned earlier, communities face drinking water project costs equal to or greater than sewage treatment costs.

Unfortunately, to date, we have not provided any general financial assistance for construction of these important projects. I hope we can use the State loan funds to assist with drinking water treatment needs in the future.

Of course, the stimulus package must be accompanied by a long-term plan to significantly reduce the budget deficit. Without a partnership between short-term stimulus and long-term deficit reduction, the economic benefits from a stimulus program only will be illusory. And our fiscal problems only will deepen.

President Clinton's economic program provides a unique opportunity to meet several of his economic and environmental goals simultaneously. An infrastructure program that provides significant funding for both environmental and transportation projects will create jobs, build a sound foundation for economic growth, and achieve a cleaner, healthier environment.

EXHIBIT 1

ENVIRONMENTAL PROTECTION AGENCY,
Washington, DC, January 22, 1993.

Hon. MAX BAUCUS,
Chairman, Committee on Environment and Public Works, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: This is in further response to a letter of November 24, 1992, from then Chairman Daniel Patrick Moynihan to William K. Reilly, Administrator, regarding the construction of environmental facilities and the need to support the economic recovery program.

In his letter, Senator Moynihan requested information regarding communities in a position to finalize contracts for the construction of wastewater, drinking water, and solid waste facilities by December 31, 1993. As we stated in our interim response, the Agency does not maintain a database which includes the requested information. However, my staff obtained comparable information from F.W. Dodge, a division of McGraw-Hill Corporation, for wastewater and drinking water facilities.

Enclosed is the information requested for wastewater and drinking water projects to the extent that we are able to provide it. The enclosed detailed project lists are organized by broad purpose (e.g., collection/supply, treatment, storage) and include the probable contract amount, project status (i.e., final planning, bid results) and the primary purpose of each facility. Information is also summarized by State. For wastewater and drinking water projects, there are three cost categories: project valuation under $100,000; project valuation from $100,000–$999,000; and project valuation of $1 million and above.

Also enclosed is summary information for solid waste projects. The solid waste information was collected by EPA Headquarters from the States and Regions and is not broken down by project status or size. The solid waste summary does not provide detailed listings of facilities because EPA does not have reliable project specific data. The summary includes estimates for underground storage tank (UST) projects on Indian lands. Because the UST program is highly delegated, the Agency does not have information about individual projects to upgrade or replace underground storage tanks except on Indian lands where there are no delegated programs. The summary includes cost estimates for certain Superfund activities over and above what will be funded during 1993 from the Superfund Trust Fund. These activities include early actions or removals (i.e., short-term responses providing immediate environmental benefits) and remedial actions (i.e., longer term construction projects to clean up sites on the Superfund National Priorities List).

In the November 24, 1992, request, Senator Moynihan asked for population to be served by each project. The Dodge database does not have population data and other potential sources do not provide adequate population information that can be readily identified for these projects. We are also not able to provide expected date of contract award; however, information is divided into the following stages: final planning, bidding, negotiating, and bid results. (Projects with bid results are closest to contract award.)

The total value of projects which are ready for construction during the next twelve months is $29.2 billion. In the wastewater category, F.W. Dodge reports a total of $11.9 billion with $4.7 billion for wastewater treatment and $7.2 billion for sanitary sewer projects. For drinking water, Dodge reports a total of $14.0 billion with $1.4 billion for storage tanks, $7.6 billion for water supply line projects, and $5.0 billion for water treatment. For solid waste projects, EPA's Office of Solid Waste and Emergency Response reports a total of $3.3 billion with $3.1 billion for municipal solid waste projects, $2.4 million for UST projects on Indian lands, and an additional $170 million for Superfund construction projects.

As indicated in my December 23, 1992, interim response to Senator Moynihan, the Association of State and Interstate Water Pollution Control Administrators (ASIWPCA) recently conducted a parallel survey of the States to assess the value of wastewater treatment projects which are ready to proceed, but are not expected to receive State or Federal funding during 1993. EPA has worked closely with the States in conducting this survey. ASIWPCA will provide the results of the survey to you when it completes compilation of the data.

I hope this information helps in addressing your concerns. Please call me if you have questions or have your staff contact Michael J. Quigley, Director, Municipal Support Division, Office of Wastewater Enforcement and Compliance, at (202) 260-5859.

Sincerely yours,

MARTHA G. PROTHRO,
Acting Assistant Administrator.

CONSTRUCTION PROJECTS—SUMMARY REPORTS

NATIONAL VALUATION SUMMARY—WASTEWATER TREATMENT PROJECTS

State	Under $100,000	$100,000 to $999,999	$1,000,000 and above	Total
AK	$31,800	$1,235,758	$3,219,477	$4,487,430
AL	299,619	2,633,593	2,506,758	5,439,970
AR	328,399	7,024,110	10,929,243	18,281,752
AZ	147,422	3,257,269	38,592,000	41,996,691
CA	1,171,933	11,072,744	1,187,243,378	1,199,488,055
CO	343,823	3,614,309	99,447,882	103,406,014
CT	313,060	4,010,643	71,597,959	75,921,662
DC	.....	1,849,400	23,653,000	25,502,400
DE	77,271	.....	.....	77,271
FL	1,467,369	19,046,222	195,296,444	215,810,035
GA	715,717	6,713,741	138,487,691	145,917,149
HI	43,666	733,990	.....	777,656
IA	40,000	2,700,678	5,114,396	7,855,074
ID	199,907	321,270	1,469,000	1,990,177
IL	515,195	11,491,631	39,181,370	51,188,196
IN	158,939	5,934,908	20,262,984	26,356,831
KS	166,037	3,548,614	2,145,000	5,859,651
KY	490,015	3,944,139	40,770,962	45,205,116
LA	767,892	3,960,334	7,257,202	11,985,428
MA	496,360	741,524	210,648,614	211,886,498
MD	124,260	5,188,063	72,518,426	77,830,749
ME	234,569	1,159,542	4,200,000	5,594,111
MI	585,044	7,902,191	72,550,155	81,037,390
MN	113,654	3,326,233	80,571,658	84,011,545
MO	227,530	5,565,090	9,874,764	15,667,384
MS	153,347	2,353,496	1,484,681	3,991,524
MT	24,200	1,429,480	.....	1,453,680
NC	236,499	5,442,506	59,142,300	64,821,305
ND	.....	120,000	.....	120,000
NE	28,328	2,104,781	5,000,000	7,133,109
NH	262,250	1,482,175	11,766,585	13,511,010
NJ	937,651	39,143,570	48,619,764	58,700,985
NM	310,931	2,651,491	6,077,324	9,039,746
NV	50,000	625,000	9,248,000	9,923,000
NY	932,625	9,100,670	419,196,441	429,229,736
OH	715,057	9,711,927	125,793,418	136,220,402
OK	416,044	7,985,498	14,662,811	23,064,353
OR	199,769	6,251,983	68,729,394	75,181,146
PA	1,982,469	19,978,343	433,942,266	455,903,078
PR	.....	1,649,000	27,180,600	28,829,600
RI	174,797	1,740,829	1,897,163	3,812,789
SC	91,900	2,142,636	23,700,000	25,934,536
SD	80,000	1,257,943	.....	1,337,943
TN	299,193	6,786,336	21,551,283	28,636,812
TX	937,819	19,726,418	376,897,423	397,561,660
UT	152,077	.....	8,971,827	9,123,904
VA	162,376	6,255,863	149,988,343	156,406,582
VT	45,795	543,621	3,678,750	4,268,166
WA	186,059	5,179,082	56,529,831	61,894,972
WI	426,308	5,857,044	91,246,000	97,529,352
WV	290,500	3,113,874	146,697,292	150,101,666
WY	67,910	1,300,607	.....	1,368,517
Total	18,223,385	250,910,169	4,449,539,859	4,718,673,413

NATIONAL SUMMARY—WASTEWATER TREATMENT PROJECTS

State	Under $100,000	$100,000 to $999,999	$1,000,000 and above	Total
AK	1	4	2	7
AL	5	10	2	17
AR	8	17	6	31
AZ	3	9	10	22
CA	23	41	47	111
CO	8	11	8	27
CT	8	11	6	25
DC	0	4	3	7
DE	1	0	0	1
FL	27	55	38	120
GA	11	23	17	51
HI	1	2	0	3
IA	1	5	2	8
ID	3	2	1	6
IL	10	25	15	50
IN	3	13	6	22
KS	3	9	2	14
KY	8	10	11	29
LA	15	9	5	29
MA	11	6	7	24
MD	3	14	8	25
ME	4	3	1	8
MI	15	28	26	69
MN	3	9	6	18
MO	5	15	3	23
MS	3	6	1	10
MT	1	3	0	4
NC	7	16	9	32
ND	0	1	0	1
NE	2	8	1	11
NH	4	5	3	12
NJ	23	29	10	62
NM	6	8	3	17
NV	1	1	2	4
NY	18	25	28	71
OH	15	32	26	73
OK	10	25	5	40
OR	4	18	8	30
PA	44	54	53	151
PR	0	3	3	6
RI	4	7	1	12
SC	3	8	6	17
SD	1	4	0	5
TN	6	16	9	31
TX	20	56	32	108
UT	3	0	3	6
VA	5	20	20	45
VT	1	3	1	5
WA	3	17	8	28
WI	8	17	10	35
WV	6	7	9	22
WY	1	4	0	5
Total	379	728	483	1,590

NATIONAL VALUATION SUMMARY—SANITARY SEWER PROJECTS

State	Under $100,000	$100,000 to $999,999	$1,000,000 and above	Total
AK	$56,650	$3,135,476	$7,201,261	$10,393,387
AL	1,605,156	16,314,214	33,250,747	51,170,117
AR	880,813	18,375,317	17,182,542	36,438,672
AZ	1,208,677	10,762,849	58,848,097	70,819,623
CA	10,166,735	100,286,184	817,298,983	927,751,902
CO	1,382,118	24,299,924	55,898,187	81,580,229
CT	1,900,474	25,531,715	70,544,931	97,977,120
DC	.....	1,142,897	5,000,000	6,142,897
DE	381,951	943,398	1,731,635	3,056,984
FL	4,968,459	61,567,550	323,716,156	390,252,165
GA	1,910,398	29,029,627	303,834,772	334,774,797
HI	90,000	351,888	57,818,708	58,260,596
IA	2,021,278	23,517,694	31,839,501	57,378,473
ID	1,418,870	4,204,642	1,392,886	7,016,398
IL	4,502,581	87,839,160	327,258,988	419,600,729
IN	2,150,579	29,128,926	92,171,246	123,450,751
KS	3,577,305	15,941,247	31,105,288	50,623,840
KY	1,428,300	19,288,396	90,400,265	111,116,961
LA	2,812,987	28,564,125	41,141,496	72,518,608
MA	2,070,575	14,598,514	92,973,191	109,642,280
MD	18,957,214	39,406,982	63,628,333	121,992,529
ME	1,214,215	17,963,755	21,427,415	40,605,385
MI	4,611,989	57,111,791	201,419,598	263,143,378
MN	4,546,031	81,833,193	130,382,103	216,761,327
MO	3,677,340	37,368,199	59,802,122	100,847,661
MS	1,498,032	15,075,912	14,544,682	31,118,626
MT	192,870	4,014,519	4,301,588	8,508,977
NC	2,516,600	44,881,493	74,693,108	122,091,201
ND	1,370,147	2,819,938	4,064,156	8,254,241
NE	3,792,883	22,225,474	11,661,538	37,679,895
NH	404,019	7,534,694	10,640,930	18,579,643
NJ	6,377,898	27,459,705	105,186,011	139,023,614
NM	609,740	7,006,710	30,348,865	37,965,315
NV	349,541	2,368,833	409,090,806	411,809,180
NY	4,649,761	53,598,546	237,214,725	295,463,032
OH	8,345,152	77,635,412	243,529,603	329,510,167
OK	2,059,516	36,164,283	20,839,690	59,063,489
OR	1,566,415	14,331,502	54,405,842	70,303,759
PA	12,530,055	51,048,492	401,815,494	465,394,041
PR	92,600	1,824,154	8,000,000	9,916,754
RI	411,538	1,999,658	25,368,000	27,779,196
SC	1,644,986	13,632,719	19,379,193	34,656,898
SD	692,772	6,999,600	32,439,498	40,131,870
TN	1,411,744	26,104,493	161,374,114	188,890,351
TX	9,102,714	167,769,742	334,372,108	511,244,564
UT	1,188,531	10,797,550	24,393,866	36,379,947
VA	3,366,884	33,672,318	221,159,377	258,198,579
VT	.....	2,729,714	.....	2,729,714
WA	1,501,434	32,075,291	58,760,141	92,336,866
WI	8,923,951	78,072,901	51,743,153	138,740,005
WV	669,377	7,352,630	39,405,159	47,427,166
WY	305,943	5,745,846	5,486,018	11,537,807
Total	153,115,798	1,503,449,792	5,541,486,116	7,198,051,706

NATIONAL SUMMARY—SANITARY SEWER PROJECTS

State	Under $100,000	$100,000 to $999,999	$1,000,000 and above	Total
AK	2	10	4	16
AL	33	54	17	104
AR	18	50	9	77
AZ	25	29	18	72
CA	203	282	158	643
CO	24	68	9	101
CT	42	65	21	128
DC	0	2	1	3
DE	8	3	1	12
FL	87	160	68	315
GA	35	80	46	161
HI	1	1	4	6
IA	40	69	16	125
ID	35	16	1	52
IL	98	215	78	391
IN	48	93	28	169
KS	78	53	10	141
KY	29	51	29	109
LA	53	73	21	147
MA	38	49	19	106
MD	342	140	20	502
ME	24	53	9	86
MI	91	153	70	314
MN	79	216	43	338
MO	75	115	27	217
MS	32	45	8	85
MT	4	11	2	17
NC	40	123	34	197
ND	22	11	3	36
NE	82	75	7	164
NH	8	17	6	31
NJ	138	92	30	260
NM	13	17	13	43
NV	6	7	3	16
NY	87	148	66	301
OH	158	249	67	474
OK	47	100	15	162
OR	28	39	14	81
PA	259	159	83	501
PR	1	5	3	9
RI	8	8	8	24
SC	38	47	10	95
SD	12	26	8	46
TN	29	74	23	126
TX	177	469	104	750
UT	24	33	8	65
VA	73	85	43	201
VT	0	10	0	10
WA	28	77	23	128
WI	167	241	29	437
WV	15	15	14	44
WY	5	16	4	25
Total	3,009	4,299	1,355	8,663

NATIONAL VALUATION SUMMARY—STORAGE TANK PROJECTS

State	Under $100,000	$100,000 to $999,999	$1,000,000 and more	Total
AK	$38,107	1,081,229	$2,579,603	$3,698,939
AL	691,179	14,207,698	6,139,900	21,038,777
AR	380,829	8,074,743	7,943,801	16,399,373
AZ	424,750	1,343,096	10,197,349	11,965,195
CA	1,695,066	16,752,735	159,233,956	177,681,757
CO	178,812	4,701,421	4,203,282	9,083,515
CT	103,314	2,501,370	1,000,000	3,604,684
DC	.....	150,000	.....	150,000
DE	.....	.....	15,227,000	15,227,000
FL	1,567,324	9,536,481	12,987,010	24,090,815
GA	436,075	11,074,819	121,663,650	133,174,544
HI	.....	100,000	1,097,002	1,197,002
IA	115,000	3,348,262	1,243,157	4,706,419
ID	195,992	1,543,757	1,012,030	2,751,779
IL	755,640	13,566,565	19,232,003	33,554,208
IN	653,012	8,424,463	1,438,000	10,515,475
KS	520,171	3,275,952	9,648,829	13,444,952
KY	538,887	14,932,844	42,617,064	58,088,795
LA	774,077	8,487,421	3,023,240	12,284,738
MA	223,965	3,510,290	20,572,185	24,306,440
MD	256,899	6,488,412	17,835,357	24,580,668
ME	.....	821,002	.....	821,002
MI	746,417	6,467,421	14,327,240	21,541,078
MN	100,000	7,219,475	6,124,324	13,443,799
MO	745,939	10,461,807	11,104,643	22,312,389
MS	584,357	7,379,115	4,938,334	12,901,806
MT	66,000	759,376	.....	825,376
NC	.....	5,183,924	11,498,471	16,682,395
ND	198,768	4,255,776	5,298,257	9,752,801
NE	180,216	2,104,799	2,724,425	5,009,440
NH	270,050	1,203,468	.....	1,473,518
NJ	1,354,513	5,904,668	22,999,190	30,258,371
NM	69,836	3,693,050	9,185,635	12,948,521
NV	168,192	1,956,000	.....	2,124,192
NY	2,086,046	15,398,611	44,249,342	61,733,999
OH	1,357,053	15,119,826	75,960,105	92,436,984
OK	417,615	4,912,372	8,603,746	13,933,733
OR	149,505	599,818	2,262,260	3,011,583
PA	1,937,386	21,016,553	154,647,449	177,601,388
PR	.....	1,093,000	1,250,000	2,343,000
RI	225,448	875,000	.....	1,100,448
SC	192,539	1,752,583	16,987,730	18,932,852
SD	270,092	2,734,830	4,609,597	7,614,519
TN	540,193	7,005,478	3,761,730	11,307,401
TX	4,242,380	28,197,632	46,090,165	78,530,177
UT	477,543	5,234,594	2,956,065	8,668,202
VA	530,952	9,805,449	23,960,472	34,296,873
VT	.....	953,469	1,,000,000	1,953,469
WA	327,996	7,849,247	8,383,800	16,561,043
WI	120,000	6,443,529	51,649,587	58,213,116
WV	350,050	3,701,033	24,730,370	28,781,453
WY	147,479	1,271,999	1,497,678	2,917,156
Total	27,405,664	324,476,462	1,019,695,033	1,371,577,159

NATIONAL SUMMARY—STORAGE TANK PROJECTS

State	Under $100,000	$100,000 to $999,999	$1,000,000 and above	Total
AK	1	3	1	5
AL	14	38	4	56
AR	7	24	4	35
AZ	9	6	4	19
CA	36	45	28	109
CO	4	16	2	22
CT	4	8	1	13
DC	0	1	0	1
DE	0	0	1	1
FL	31	31	6	68
GA	8	25	13	46
HI	0	1	1	2
IA	3	9	1	13
ID	3	5	1	9
IL	15	43	7	65
IN	15	21	1	37
KS	10	11	2	23
KY	11	37	17	65
LA	15	23	2	40
MA	6	10	7	23
MD	6	17	4	27
ME	0	3	0	3
MI	17	17	6	40
MN	2	20	4	26
MO	13	32	6	51
MS	14	27	3	44
MT	1	1	0	2
NC	0	13	6	19
ND	3	9	1	13
NE	4	6	2	12
NH	5	2	0	7
NJ	34	21	11	66
NM	3	15	5	23
NV	4	7	0	11
NY	40	45	20	105
0H	28	38	18	84
OK	10	14	3	27
OR	3	3	1	7
PA	41	50	28	119
PR	0	2	1	3
RI	4	2	0	6
SC	6	3	4	13
SD	6	11	2	19
TN	14	18	2	34
TX	80	91	17	188
UT	8	12	1	21
VA	9	22	10	41
VT	0	2	1	3
WA	8	18	6	32
WI	3	15	8	26
WV	6	9	8	23
WY	3	2	1	6
Total	567	904	282	1,753

NATIONAL VALUATION SUMMARY—WATER SUPPLY LINE PROJECTS

State	Under $100,000	$100,000 to $999,999	$1,000,000 and above	Total
AK	$214,599	$2,558,808	$9,574,784	$12,348,191
AL	1,729,174	28,147,107	30,148,835	60,025,116
AR	1,128,655	17,951,868	29,145,264	48,225,787
AZ	2,107,851	20,225,480	134,507,774	156,841,105
CA	8,866,229	113,892,609	1,075,091,308	1,197,850,146
CO	2,405,268	29,126,332	58,372,731	89,904,331
CT	976,847	8,930,401	16,243,241	26,150,489
DC	.....	1,457,861	11,870,350	13,328,211
DE	381,632	2,392,494	.....	2,711,126
FL	5,194,345	83,666,054	319,387,231	408,247,630
GA	2,664,527	50,508,304	293,932,789	347,105,620
HI	.....	3,709,799	57,818,708	61,528,507
IA	1,569,679	15,629,751	49,698,286	66,897,716
ID	259,524	5,199,794	2,383,790	7,843,108
IL	4,809,166	58,331,825	173,550,483	236,691,474
IN	1,912,298	23,666,296	41,529,137	67,107,731
KS	4,611,878	13,978,369	31,303,098	49,893,345
KY	5,254,941	35,544,321	87,018,882	127,818,144
LA	3,417,005	37,886,333	41,466,717	82,770,055
MA	2,319,506	39,028,933	130,345,646	171,694,085
MD	11,248,737	36,749,284	75,047,436	123,045,457
ME	494,786	6,914,391	25,010,935	32,420,112
MI	5,146,753	67,691,518	209,917,884	282,756,155
MN	3,982,966	66,952,027	77,636,133	148,571,126
MO	2,409,456	31,626,359	31,345,781	65,381,596
MS	1,451,833	22,001,527	13,398,116	36,851,476
MT	335,650	5,015,187	.....	5,350,837
NC	3,301,081	52,323,379	35,643,570	91,268,030
ND	1,593,930	8,743,655	22,040,836	32,378,421
NE	2,901,813	11,031,678	14,507,084	28,441,575
NH	652,755	3,730,757	7,566,585	11,950,097
NJ	3,117,915	19,455,034	78,509,125	101,082,074
NM	1,259,190	13,562,112	33,426,546	48,247,848
NV	462,911	3,258,544	412,470,112	416,191,567
NY	5,623,593	59,772,744	602,810,955	668,207,292
OH	8,485,955	91,960,611	283,620,791	384,067,357
OK	3,058,383	25,153,439	24,772,415	52,984,237
OR	1,264,422	14,349,393	12,578,224	28,192,039
PA	12,114,250	55,954,269	379,500,485	447,569,004
PR	.....	2,151,800	21,052,700	23,204,500
RI	150,000	5,478,092	5,540,621	11,168,713
SC	1,576,061	9,298,291	64,092,929	74,967,281
SD	666,493	8,856,894	34,486,566	44,009,953
TN	1,967,969	21,921,960	71,261,730	95,151,659
TX	11,920,710	180,877,296	309,316,629	602,114,635
UT	2,470,395	15,986,476	24,633,493	43,090,364
VA	2,010,211	39,507,394	194,244,398	235,762,003
VT	352,327	4,226,983	2,000,000	6,579,310
WA	1,713,427	29,605,708	62,926,940	94,246,075
WI	8,009,352	72,465,604	28,505,086	108,980,042
WV	673,340	9,373,782	37,140,488	47,187,610
WY	758,865	8,962,771	20,965,726	30,687,362
Total	150,936,653	1,596,791,698	5,809,359,373	7,557,087,724

NATIONAL SUMMARY—WATER SUPPLY LINE PROJECTS

State	Under $100,000	$100,000 to $999,999	$1,000,000 and above	Total
AK	3	7	4	14
AL	35	84	16	135
AR	29	51	15	95
AZ	42	57	21	120
CA	175	338	167	680
CO	45	81	12	138
CT	19	26	6	51
DC	0	3	2	5
DE	7	6	0	13
FL	97	213	74	384
GA	48	137	55	240
HI	0	7	4	11
IA	29	43	19	91
ID	6	17	2	25
IL	99	181	27	307
IN	42	74	10	126
KS	110	53	13	176
KY	142	110	33	285
LA	65	111	21	197
MA	47	110	28	185
MD	205	132	23	360
ME	8	19	8	35
MI	98	195	68	361
MN	70	182	28	280
MO	53	100	13	166
MS	26	73	7	106
MT	8	10	0	18
NC	54	140	19	213
ND	25	26	9	60
NE	64	43	5	112
NH	16	13	4	33
NJ	64	61	16	141
NM	26	39	13	78
NV	10	10	5	25
NY	110	177	79	366
OH	160	279	75	514
OK	64	89	12	165
OR	20	51	4	75
PA	242	168	75	485
PR	0	4	8	12
RI	3	14	2	19
SC	34	32	9	75
SD	14	39	11	64
TN	35	69	4	108
TX	213	519	83	815
UT	57	46	12	115
VA	39	100	37	176
VT	5	12	1	18
WA	34	88	16	138
WI	145	232	17	394
WV	13	24	14	51
WY	16	20	6	42
Total	2,971	4,715	1,212	8,898

NATIONAL VALUATION SUMMARY—WATER TREATMENT PROJECTS

State	Under $100,000	$100,000 to $999,999	$1,000,000 and above	Total
AK	$117,590	$763,005	$7,579,603	$8,460,198

NATIONAL VALUATION SUMMARY—WATER TREATMENT PROJECTS—Continued

State	Under $100,000	$100,000 to $999,999	$1,000,000 and above	Total
AL	722,522	12,529,544	34,410,440	47,662,506
AR	699,784	11,744,605	29,568,439	42,012,828
AZ	1,020,499	7,673,828	83,392,323	92,086,650
CA	6,186,568	70,474,704	670,685,981	747,347,253
CO	1,196,156	11,081,841	73,188,494	85,466,491
CT	175,432	5,524,071	32,619,886	38,319,389
DE	242,998	3,062,048	3,497,010	6,802,416
FL	4,109,809	34,699,780	223,124,990	261,934,579
GA	820,107	13,579,280	144,615,141	159,014,528
HI		1,560,954	7,560,002	9,120,956
IA	354,877	6,011,861	52,525,784	58,892,522
ID	312,501	2,800,973		3,113,474
IL	2,753,626	27,304,504	82,098,885	112,157,015
IN	711,448	6,233,013	4,695,144	11,639,605
KS	861,208	4,522,307	13,766,924	19,150,439
KY	650,185	15,009,506	62,064,342	77,724,033
LA	939,004	18,576,366	37,641,205	57,156,575
MA	1,754,036	5,432,163	242,790,157	249,976,356
MD	1,590,066	20,396,943	87,373,227	109,360,236
ME	112,500	1,649,628	12,909,490	14,671,618
MI	2,126,011	14,847,281	104,825,311	121,798,603
MN	1,446,025	5,341,979	119,119,872	125,907,876
MO	1,328,183	14,261,731	15,820,856	31,410,770
MS	839,341	13,970,065	17,682,797	32,492,203
MT	270,569	1,703,559	4,236,362	6,210,490
NC	695,539	8,792,296	408,395,456	417,883,291
ND	356,522	1,543,427	25,252,016	27,151,965
NE	945,879	2,952,498	9,168,035	13,066,412
NH	705,740	150,000	7,553,298	8,409,038
NJ	3,030,321	10,190,308	126,580,542	139,801,171
NM	782,867	5,794,054	60,363,298	66,940,219
NV	570,528	704,792	17,365,000	18,640,320
NY	4,004,495	19,888,116	237,156,685	261,049,296
OH	2,514,149	18,015,601	174,859,705	195,389,455
OK	1,299,963	14,365,847	74,873,664	90,539,474
OR	1,018,624	6,319,913	22,216,000	29,554,537
PA	2,453,331	29,078,986	488,198,173	519,730,490
PR		1,128,800	14,557,600	15,686,400
RI	130,000	1,771,452	20,000,000	21,901,452
SC	479,113	6,346,646	52,506,443	59,332,202
SD	556,360	1,425,955	20,925,900	22,908,215
TN	498,014	15,323,221	56,326,618	72,147,853
TX	4,897,153	35,623,616	174,767,791	215,288,560
UT	1,258,985	5,043,846	51,562,845	57,865,676
VA	1,087,004	8,433,792	39,031,298	48,552,094
VT	468,497	1,555,079	13,068,500	15,092,076
WA	1,241,518	10,598,293	18,161,231	30,001,042
WI	1,378,120	9,958,775	18,869,835	30,206,730
WV	293,926	4,115,776	51,396,363	55,806,065
WY	816,248	3,536,322	1,288,267	5,640,837
Total	62,823,941	553,413,310	4,352,237,228	4,968,474,479

NATIONAL SUMMARY—WATER TREATMENT PROJECTS

State	Under $100,000	$100,000 to $999,999	$1,000,000 and above	Total
AK	2	3	2	7
AL	16	32	12	60
AR	14	33	15	62
AZ	24	21	9	54
CA	128	202	90	420
CO	29	32	13	74
CT	7	12	5	24
DE	4	10	1	15
FL	82	110	47	239
GA	20	30	18	68
HI	0	4	3	7
IA	6	19	10	35
ID	7	10	0	17
IL	63	78	25	166
IN	15	22	4	41
KS	16	15	5	36
KY	14	33	24	71
LA	21	56	15	92
MA	48	16	14	78
MD	34	75	15	124
ME	2	3	4	9
MI	43	44	23	110
MN	34	16	10	60
MO	25	42	7	74
MS	16	54	9	79
MT	6	6	2	14
NC	12	23	20	55
ND	8	6	7	21
NE	20	10	4	34
NH	17	1	4	22
NJ	69	33	11	113
NM	19	24	10	53
NV	12	4	3	19
NY	88	61	30	179
OH	56	52	33	141
OK	31	46	17	94
OR	17	17	3	37
PA	62	76	57	195
PR	0	4	3	7
RI	4	4	1	9
SC	14	16	7	37
SD	10	8	8	26
TN	13	40	9	62
TX	101	125	21	247
UT	32	12	6	50
VA	22	24	12	58
VT	9	4	2	15
WA	23	30	9	62
WI	38	26	9	73
WV	6	7	15	28
WY	19	11	1	31
DC	0	0	0	0
Total	1,378	1,642	684	3,704

NATIONAL SUMMARY—WATER TREATMENT PROJECTS—Continued

UNDERGROUND STORAGE TANK PROJECTS ON INDIAN LANDS

EPA region	Tribe	Cost
5	Menominee Tribe	$100,000
5	Oneida Apache Tribe	50,000
6	Jicarilla Apache Tribe	100,000
6	Laguna Pueblo	100,000
6	Sandia Pueblo	75,000
8	Southern Ute	300,000
9	Chenehuevi Tribe	250,000
9	Fort McDowell Reservation	500,000
9	Navajo Nation	600,000
10	Yakima Tribe	300,000

MUNICIPAL SOLID WASTE PROJECTS

EPA region	State or tribe, and project type	Cost (thousands)
1	Connecticut, landfill closures (15)	$14,000
1	Connecticut, recycling center (1)	2,000
1	Connecticut, transfer stations (6)	1,200
1	Maine, landfill closures (296)	74,195
1	Maine, landfill construction (2)	15,000
1	Massachusetts, landfill closures (30)	67,750
1	New Hampshire, landfill closures (3)	975
1	Rhode Island, landfill closures (3)	5,850
2	New Jersey, recycling, source separation, and treatment facilities (8).	191,779
2	New York, landfill closures (74)	161,472
2	New York, recycling facilities (18)	109,730
2	New York, sludge composting projects (20)	161,315
2	New York, landfill construction (10)	20,000
2	New York, transfer stations (3)	1,000
2	Puerto Rico, landfill closure and construction (11)	462,321
2	Virgin Islands, miscellaneous projects (10)	287,900
3	Delaware, landfill expansions (2)	11,500
3	Delaware, gas collection (2)	3,700
3	Pennsylvania recycling centers (21)	9,466
5	Illinois, urban trash cleanup (1)	920
5	Illinois, HHW collection centers (5)	11,000
5	Leech Lake Indian Reservation, landfill closure (1)	715
5	Red Lake Indian Reservation, landfill closure (1)	310
5	White Earth Indian Reservation landfill closure (1) transfer station (1).	100
5	Menominee Indian Reservation, landfill closure (1)	600
5	Bad River Indian Reservation, landfill closure (1)	250
5	Lac Courte Oreilles Indian Reservation, landfill closure (1).	450
5	Hannahwille Indian Reservation, landfill closure (1)	480
5	Sault Ste. Marie, landfill closure (1)	850
6	Louisiana, landfill closures ( )	26,500
6	Louisiana, landfill expansions (28)	180,000
6	Louisiana, lanffill construction (1)	4,000
6	Louisiana, transfer stations (20)	100,000
6	Louisiana, waste to energy (1)	350,000
6	Louisiana, composting facilities (3)	150,000
6	Louisiana, waste oil (64)	6,400
6	New Mexico, landfill construction (11)	9,200
6	New Mexico, landfill expansion (1)	750
6	Oklahoma, landfill expansions (4)	16,000
6	Oklahoma, landfill closures (50)	5,000
6	Oklahoma, transfer stations (25)	1,750
6	Oklahoma, recycling centers (5)	750
6	Oklahoma, composting facilities (25)	3,125
6	Texas, landfill closures (179)	296,578
6	Texas, transfer stations (9)	1,285
6	Taos Pueblo, landfill closure (1)	45
6	Taos Pueblo, transfer station (1)	100
7	Iowa, HHW processing facilities (4)	300
7	Iowa, landfill closures (16)	43,725
7	Kansas, transfer stations (5)	5,479
7	Kansas, landfill closure (1)	2,000
7	Missouri, landfill closures (9)	1,647
7	Missouri, transfer stations (4)	1,500
7	Missouri, miscellaneous NSW facilities (3)	18,000
7	Nebraska, landfill (1)	321
7	Nebraska, tire processing facility	472
7	Nebraska, recycling, composting and mulch facilities (15).	1,499
7	Potowatomi Reservation, cleanup and recycling	85
7	Kickapoo Reservation, landfill closure recycling	50
7	Omaha Reservation, landfill closure and recycling	125
7	Winnebago Reservation, recycling center (1)	55
7	Santee Sioux Reservation, landfill closure and recycling.	90

MUNICIPAL SOLID WASTE PROJECTS—Continued

EPA region	State or tribe, and project type	Cost (thousands)
7	Mesquakie (Sac and Fox of Mississippi) recycling facility.	60
7	Sac and Fox (Mississippi), recycling facility	25
8	Colorado, landfill closures (2)	400
8	Colorado, landfill construction (2)	2,000
8	Colorado, transfer stations (2)	75
8	Colorado, combuster (1)	250
8	North Dakota, landfill closures (20)	5,055
8	South Dakota, landfill closures (79)	3,982
8	South Dakota, landfill construction (18)	9,082
8	South Dakota, transfer stations (3)	735
8	South Dakota, restricted use facilities (83)	2,154
8	Wyoming, landfill construction (1)	730
8	Fort Belknap, landfill closures (3)	600
8	Fort Berthold, landfill closures (3)	600
8	Cheyenne River, landfill upgrade (1)	1,000
8	Oglala Sioux, landfill closures (9)	510
8	Rosebud Sioux, landfill closure (15)	645
8	Standing Rock, landfill closures (8)	1,600
8	Uintah and Ouray, landfill closures (5)	1,000
8	Wind River, landfill closures (10)	2,000
9	Agua Caliente Reservation, landfill closures (3)	75
9	Grindstone Rancheria, landfill closure (1)	25
9	Hopland Rancheria, landfill closures (5)	125
9	Morongo Reservation, landfill closures (2)	50
9	Round Valley Reservation, landfill closures (6)	150
9	Santa Ynez Reservation, landfill closure (1)	25
9	Yurok Reservation, landfill closures (5)	125
9	Tohono O'odham Nation, landfill closures (50)	1,250
9	Hopi Reservation, landfill closures (3)	750
9	Navajo Nation, landfill closures (3)	75
9	Navajo Nation, transfer stations (6)	600
9	Navajo Nation, landfill construction (2)	2,000
10	Alaska, landfill closures (2)	2,000
10	Alaska, landfill construction (2)	6,000
10	Alaska, landfill expansion (1)	5,000
10	Alaska, plastic recycling facility (1)	100
10	Idaho, landfill closure and construction (44)	84,563
10	Oregon, miscellaneous projects (10)	4,766
10	Washington, landfill closures (3)	10,440
10	Washington, miscellaneous projects (26)	87,400
10	Umitilla Tribe, landfill closures (10)	650
10	Makah Tribe, landfill closure (1)	3,000

ASSOCIATION OF STATE AND INTERSTATE WATER POLLUTION CONTROL ADMINISTRATORS,
Washington, DC, January 22, 1993.

Hon. MAX BAUCUS,
Chairman, Senate Environment and Public Works Committee, Dirksen Senate Office Building, Washington, DC.

DEAR CHAIRMAN BAUCUS: In response to your request for information relative to the short term needs of the State Revolving Loan Fund (SRF) for supplemental funds, the Association of State and Interstate Water Pollution Control Administrators (ASIWPCA) has surveyed the 50 States. ASIWPCA found that there are over $10 Billion ready to proceed projects currently on line that could benefit.

ADDITIONAL SRF FUNDS THAT COULD BE USED

[In millions of dollars]

	1993	1994	Total
Traditional needs: (wastewater plants, interceptors, collectors, combined sewer overflows, etc.)	$3,938	$3,741	$7,679
Other States[1]	345	483	828
Total, 40 reporting States	4,283	4,224	8,507

[1]Alaska, Arkansas, Iowa, Montana, and North Dakota can satisfy projects that are ready to go on the SRF priority list for traditionally eligible needs if SRF funding continues at fiscal year 1993 levels. But, they could use the indicated funds if they were able to eliminate Title II requirements and provide principal subsidies for water supply or wastewater for small hardship communities or native tribes. Rhode Island reported in this category, as well as for traditional needs.

Note.—While the other States were not asked to provide such information, their ability to use funds for non-traditional eligibilities, if flexibility were allowed, would substantially increase the funding levels reported above. Total estimated for 50 States and territories, $10,000,000,000.

Coupled with other ASIWPCA and USEPA information, the survey data indicates that the SRF should be appropriated at the $5 Billion level in FY 1994–97, as originally authorized by the 1972 Act. This does not account for inflation or increased mandates under the 1987 Act. It has been clearly documented that the SRF is the best mechanism for pro-

moting construction of effective environmental infrastructure. It is unique in its ability to provide funding and jobs, with $5 Billion generating up to 350,000 jobs annually and over 2–5 times that investment over time.

Short-Term: The over $10 Billion in additional projects "ready to go" for 1993 and 1994 would enhance protection of America's waters. In providing supplemental funds, however, Congress needs to assure that funds are accompanied by the following reforms, so that States can expedite obligations:

(1) Due to deficits, States are unable to match a supplemental.

(2) Purchase of land/easements should be eligible. Restrictions on funding collectors and combined sewer overflows should be eliminated.

(3) Limitations on refunding/refinancing and cash payments should be eliminated.

(4) States should be able to extend repayment periods and blend principal subsidies with loans for small hardship communities. Smaller projects should be exempt from Federal requirements.

(5) Grant projects, created by the Bush Administration at the SRF's expense, should not continue. "Special treatment for noncompliance" fuels a feeding frenzy among city lobbyists that is inequitable and threatens the very core of the SRF. The multitude of municipalities who accepted their responsibilities are being penalized.

(6) States, whose projects "ready to go" can be satisfied by continuing existing funding levels, should be able to fund water supply projects and eliminate Title II and other Federal requirements.

Long-Run: Municipalities are the largest single source of water pollution. The nation's wastewater treatment needs documented by the States and USEPA exceed $130 Billion. Once the 1987 Act requirements are reflected in facility plans, they are likely to be over $200 Billion. The SRF, with its leveraging potential, offers the only viable national vehicle for meeting that need. It has been successful in the 50 States. While the Act envisioned a 6 year $8.4 Billion capitalization to be phased out in FY94, Congress continues the program because of its effectiveness. States can tailor SRFs to meet local needs, building projects cheaper and 50 percent faster. In contrast, with 55–75 percent Federal grants, cities face a plethora of nationally prescriptive requirements that increase costs, delay projects, discourage local initiative and often reward non-compliance. In providing long term funding, the following needs to be considered in addition to the above reforms as outlined in ASIWPCA testimony:

Problems States are encountering in providing a 20 percent match,

Simplification of Federal requirements,

Broad flexibility to extend repayment periods, and

Elimination of the 4 percent restriction on funds for State administration.

The Association appreciates this opportunity to respond to your request. Please contact me if you have any questions or further needs.

Sincerely,

ROBERTA (ROBBI) SAVAGE,
Executive Director.

ADDITIONAL SRF FUNDS THAT COULD BE USED FOR PROJECTS DOCUMENTED AND READY TO GO

[In millions of dollars]

	1993	1994	Total
Alabama	49	.....	49

ADDITIONAL SRF FUNDS THAT COULD BE USED FOR PROJECTS DOCUMENTED AND READY TO GO—Continued

[In millions of dollars]

	1993	1994	Total
Alaska[1]	63	63	126
Arkansas[1]	25	175	200
California	371	385	756
Colorado	19	200	219
Connecticut	146	225	371
Delaware	90	42	132
Florida	200	400	600
Georgia	95	40	135
Idaho	19	21	40
Illinois	214	.....	214
Iowa[1]	20	20	40
Kansas	3	20	23
Louisiana	16	17	33
Maine	100	200	300
Maryland	.....	317	317
Michigan	41	100	141
Minnesota	16	173	189
Mississippi	26	15	41
Montana[1]	20	28	48
New Hampshire	57	120	177
New Jersey	280	140	420
New Mexico	20	12	32
New York	180	277	457
North Dakota[1]	172	172	344
Ohio	122	100	222
Oklahoma	37	29	66
Pennsylvania	128	33	161
Rhode Island	29+[1]45	18+[1]25	47+[1]70
South Carolina	156	116	272
South Dakota	25	12	37
Tennessee	50	50	100
Texas	320	.....	320
Utah	.....	22	22
Vermont	8	18	26
Virginia	200	300	500
Washington	790	197	987
West Virginia	49	20	79
Wisconsin	82	112	194
Total; 40 States reporting	4,283	4,224	8,507

[1]These States do not have projects "ready to go" on SRF priority lists for traditionally eligible needs that could now use supplemental funds, but could use the funds indicated if they were able to eliminate Title II requirements and provide principal subsidies or zero interest loans for water supply or wastewater for small hardship communities or Native Tribes.

Note.—Rhode Island has projects in both categories. While the other States were not asked to provide such information, their ability to use funds in a like manner, if flexibility were allowed, could substantially increase the totals indicated above. Estimated total for 50 States and the territories: Over $10,000,000,000.

LIST OF STATE PROJECTS READY TO GO, WHICH COULD BE FUNDED IF ADDITIONAL FEDERAL FUNDS ARE PROVIDED

[In millions of dollars]

State and projects	Additional SRF funding needs		Total
	1993	1994	
Alabama:			
Montgomery	49	.....	49
Jefferson County	.....	.....	.....
Alex City	.....	.....	.....
Monroeville	.....	.....	.....
Jasper	.....	.....	.....
Mobile	.....	.....	.....
Robertsdale	.....	.....	.....
Wetumpka	.....	.....	.....
Chickasaw	.....	.....	.....
Oxford	.....	.....	.....
Satsuma	.....	.....	.....
Decatur	.....	.....	.....
Level Plains	.....	.....	.....
Silver Hill	.....	.....	.....
Madison	.....	.....	.....
Huntsville	.....	.....	.....
Talladega	.....	.....	.....
Marion	.....	.....	.....
Arkansas:			
Kodiak	63	63	126
Ketchikan	.....	.....	.....
Unalaska	.....	.....	.....
Wrangell	.....	.....	.....
Seldovia	.....	.....	.....
Pelican	.....	.....	.....
King Cove	.....	.....	.....
Skagway	.....	.....	.....
Nome	.....	.....	.....
Juneau	.....	.....	.....
Petersburg	.....	.....	.....
Saxman.			
(Plus an additional 100 projects to be determined)	.....	.....	.....
Arizona:			
231 projects identified (available from ASIWPCA	25	175	200
EBMUD—San Antonio	371	385	756
Escondido	.....	.....	.....
Pacheco	.....	.....	.....

LIST OF STATE PROJECTS READY TO GO, WHICH COULD BE FUNDED IF ADDITIONAL FEDERAL FUNDS ARE PROVIDED—Continued

[In millions of dollars]

State and projects	Additional SRF funding needs		Total
	1993	1994	
Ojai	.....	.....	.....
Livermore	.....	.....	.....
Triunfo	.....	.....	.....
Moulton Niguel	.....	.....	.....
Padre Dam	.....	.....	.....
Olivehain	.....	.....	.....
San Francisco	.....	.....	.....
Loyalton	.....	.....	.....
North of River	.....	.....	.....
Tulare	.....	.....	.....
City of Colton	.....	.....	.....
San Lorenzo Valley	.....	.....	.....
Lake Mathews	.....	.....	.....
County of Merced	.....	.....	.....
City of Corona	.....	.....	.....
Paradise	.....	.....	.....
City of Santa Monica	.....	.....	.....
Monterey Regional WPCA	.....	.....	.....
Placer County	.....	.....	.....
Running Springs	.....	.....	.....
Rubidoux	.....	.....	.....
Santa Cruz	.....	.....	.....
Padre Dam	.....	.....	.....
Torrance	.....	.....	.....
San Elijo	.....	.....	.....
Watsonville	.....	.....	.....
South Tahoe	.....	.....	.....
Western Riverside	.....	.....	.....
Pacifica	.....	.....	.....
Bear Valley	.....	.....	.....
Santa Margarita	.....	.....	.....
Otay Water District	.....	.....	.....
Windsor	.....	.....	.....
SAWPA	.....	.....	.....
LACSD La Can	.....	.....	.....
Lake County	.....	.....	.....
Sonoma Valley	.....	.....	.....
Valencia	.....	.....	.....
McKinleyville	.....	.....	.....
June Lake	.....	.....	.....
WASCO	.....	.....	.....
San Francisco	.....	.....	.....
Santa Monica	.....	.....	.....
Colorado:			
Boulder	19	200	219
Niwot	.....	.....	.....
Mesa County	.....	.....	.....
Empire	.....	.....	.....
Ft. Morgan	.....	.....	.....
Mine Land Rec	.....	.....	.....
San Juan River Met	.....	.....	.....
Connecticut:			
Newton	146	225	371
East Haven	.....	.....	.....
Bridgeport	.....	.....	.....
Suffield	.....	.....	.....
Canton	.....	.....	.....
West Haven	.....	.....	.....
New Haven	.....	.....	.....
Meriden	.....	.....	.....
Stratford	.....	.....	.....
Middletown	.....	.....	.....
Waterford	.....	.....	.....
East Hampton	.....	.....	.....
MDC	.....	.....	.....
Norwich	.....	.....	.....
Seymour	.....	.....	.....
New Milford	.....	.....	.....
Greenwich	.....	.....	.....
Stanford	.....	.....	.....
Milford	.....	.....	.....
Norwalk	.....	.....	.....
Fairfield	.....	.....	.....
Branford	.....	.....	.....
Westport	.....	.....	.....
Ridgefield	.....	.....	.....
Maiden	.....	.....	.....
Lebanon	.....	.....	.....
Lisbon	.....	.....	.....
Ansonia	.....	.....	.....
Waterbury	.....	.....	.....
Seymour/Oxford	.....	.....	.....
Simsbury	.....	.....	.....
Middlefield	.....	.....	.....
Griswold	.....	.....	.....
Vernon	.....	.....	.....
Somers	.....	.....	.....
Wilton	.....	.....	.....
North Canaan	.....	.....	.....
Ledyard	.....	.....	.....
Wallingford	.....	.....	.....
Hartford	.....	.....	.....
South Windsor	.....	.....	.....
Newington	.....	.....	.....
Harrington	.....	.....	.....
Winchester	.....	.....	.....
Union	.....	.....	.....
Woodstock	.....	.....	.....
Colechester	.....	.....	.....
Sterling	.....	.....	.....

LIST OF STATE PROJECTS READY TO GO, WHICH COULD BE FUNDED IF ADDITIONAL FEDERAL FUNDS ARE PROVIDED—Continued

[In millions of dollars]

State and projects	Additional SRF funding needs		Total
	1993	1994	
Killingworth			
Talcottville			
Gillette Castle			
Sherwood Island			
Wharton Brook			
Black Rock			
Peoples Forest			
Kent Falls			
Lake Waranaug			
Day Pond			
Squantz Pond			
Chattfield Hollow			
Wadsworth Falls			
Sleeping Giant			
Hublein Tower			
Various camp grounds and picnic areas			
Delaware:			
Rehoboth	90	42	132
Kent County			
New Castle County			
Seaford			
Florida:			
Pinellas County	200	400	600
Apopka			
Howey in the Hills			
Oviedo			
Seminole County			
S. Broward County			
Sanford			
Inverness			
Citrus County			
Longwood			
Volusia County			
Tequesta			
Bartow			
Punta Gorda			
Collier County			
Edgewater			
Gainesville			
Winter Park			
Alachua County			
Plant City			
Palmetto			
Eustis			
Callaway			
Palatka			
Panama City			
Magnolia Park			
North Palm Beach			
Largo			
Lake Mary			
Ft. Pierce			
Yankeetown			
Brevard County			
Pinellas Park			
St. Johns County			
Winter Garden			
Dunedin			
Miramar			
Jacksonville Beach			
Hallandale			
Indian River County			
Clearwater			
Escambia County			
Delray Beach			
Jacksonville			
Davie			
Daytona Beach			
Sarasota County			
Georgia:			
Columbus	95	40	135
Cobb County			
Blakely			
Donalsonville			
Savannah			
Indiana:			
Lemhi County	19	21	40
Stanley			
Meridian			
Montpelier			
Vicrot			
Boise			
Council			
Culdesac			
Pocatello			
Priest River			
Hayden			
Buhl			
Coeur d' Alene			
Gooding			
Nampa			
Rupert			
Heyburn			
Illinois:			
Bonnie Brae	214		214
Braidwood			
Chillicothe			
Clinton			
Country Club Hills			
Cullom			

LIST OF STATE PROJECTS READY TO GO, WHICH COULD BE FUNDED IF ADDITIONAL FEDERAL FUNDS ARE PROVIDED—Continued

[In millions of dollars]

State and projects	Additional SRF funding needs		Total
	1993	1994	
DuPage County			
Dupo			
Evanston			
Fairbury			
Farmer City			
Fox Lake			
Franklin Park			
Henry			
Lake Zurich			
Libertyville			
McLeansboro			
Maple Park			
Marseilles			
Mendota			
Minonk			
Mt. Prospect			
MWRDGC			
North Chicago			
Olney			
Oneida			
Palos Park			
River Forest			
Rock River			
Sauget			
Seneca			
Sheridan			
Skokie			
Springfield			
Toluca			
Wasco			
Washington			
Wheaton			
Wilmette			
Iowa:			
(Definitive project list not yet available)	20	20	40
Kansas:			
Topeka	3	20	23
Hays			
JO County			
Ashland			
Atchison			
Maple Hill			
Osawatomie			
Leon			
Sedan			
Satanta			
Olathe			
Coffeyville			
Eureka			
McPherson			
Caldwell			
Valley Falls			
Lenora			
Altoona			
Scranton			
Great Bend			
Holyrood			
Madison			
CK County			
Valley Center			
Anthony			
St. Francis			
Waverly			
SH County			
Hesston			
Baldwin			
Udall			
Gypsum			
Ottawa			
Bonner Springs			
Mankato			
Baxter Springs			
Arkansas City			
Ellinwood			
Girard			
Louisiana:			
Sabine River Authority	16	17	33
Shreveport			
St. Charles Parish			
Lafourche Parish			
Maine:			
Bangor	100	200	300
Portland			
Westbrook			
Bath			
Thomaston			
Vinalhaven			
Cornish			
Maryland:			
(Definitive project list not yet available)		317	317
Michigan:			
Branchio	41	100	141
Brandon			
Dundee			
Grass Lake			
Leoni Tays			
Litchfield			
Port Austin			
Wyandottle			
Detroit			

LIST OF STATE PROJECTS READY TO GO, WHICH COULD BE FUNDED IF ADDITIONAL FEDERAL FUNDS ARE PROVIDED—Continued

[In millions of dollars]

State and projects	Additional SRF funding needs		Total
	1993	1994	
Minnesota:			
Pelican Rapids	16	173	189
St. Paul			
Moose Lake			
Morgan			
Silver Bay			
Winona Township			
Landfall			
Wyoming			
Danvers			
Kasson			
Redwood Falls			
Albert Lea			
Moorehead			
Piera			
Princeton			
Cokato			
Nashwauk			
MWCC Bubble Ret.			
Farmington			
MNWCC Joint Int.			
MWCC Lino Lakes Int.			
MWCC Blaine Int.			
MWCC Chaska			
MWCC B. Lake			
Mississippi:			
Vicksburg	26	15	41
Jackson			
Aberdeen			
Lumberton			
Waveland Regional			
Montana.			
(Definitive project list not yet available)	20	28	48
New Hampshire:			
Rochester	57	120	177
Keene			
Epping			
Concord			
Nashua			
Milford			
Manchester			
Merrimack			
Claremont			
Jaffrey			
Goffstown			
Hinsdale			
Northwood			
Hudson			
New Jersey:			
71 projects identified (Available from ASIWPCA)	280	140	420
New Mexico:			
Albuquerque	20	12	32
New York:			
Albany County (4)	180	277	457
Allegany (5)			
Broose (3)			
Cattaraugus (7)			
Cayuga (11)			
Chautaugua (5)			
Cheung (2)			
Cherango (4)			
Clinton (4)			
Columbia (3)			
Cortland (3)			
Delaware (4)			
Dutchess (8)			
Erie (18)			
Essex (6)			
Franklin (6)			
Fulton (9)			
Genesee (5)			
Greene (3)			
Hamilton (2)			
Herklimer (7)			
Jefferson (12)			
Kings (3)			
Lewis (6)			
Livingston (5)			
Madison (4)			
Monroe (12)			
Montgomery (10)			
Nassau (22)			
Niagara (16)			
Oneida (10)			
Onandaga (10)			
Orange (35)			
Orleans (2)			
Osuego (7)			
Otsego (2)			
Putnam (1)			
Queens (1)			
Rensselaer (7)			
Rockland (3)			
Saratoga (9)			
Schenectady (5)			
Schaharia (1)			
Schuyler (1)			
Seneca (4)			
St. Lawrence (11)			

LIST OF STATE PROJECTS READY TO GO, WHICH COULD BE FUNDED IF ADDITIONAL FEDERAL FUNDS ARE PROVIDED—Continued

[In millions of dollars]

State and projects	Additional SRF funding needs		Total
	1993	1994	
Steuben (6)	.....	.....	.....
Suffolk (24)	.....	.....	.....
Sullivan (9)	.....	.....	.....
Tompkins (8)	.....	.....	.....
Ulster (9)	.....	.....	.....
Warren (2)	.....	.....	.....
Washington (5)	.....	.....	.....
Wayne (10)	.....	.....	.....
Westchester (8)	.....	.....	.....
Wyoeing (1)	.....	.....	.....
North Dakota:			
105 projects identified (Available from ASIWPCA)	172	172	344
Ohio:			
Cincinnati Metropolitan	122	100	222
Bowling Green	.....	.....	.....
Euclid	.....	.....	.....
Springfield	.....	.....	.....
Medina County	.....	.....	.....
Hiram	.....	.....	.....
Granville	.....	.....	.....
Northeast Ohio Regional	.....	.....	.....
Oklahoma:			
348 projects identified (Available from ASIWPCA)	37	29	66
Pennsylvania:			
Decatur	128	33	161
Harrison	.....	.....	.....
Huston	.....	.....	.....
Mansfield	.....	.....	.....
Middleburg	.....	.....	.....
Muncy	.....	.....	.....
Porter	.....	.....	.....
Shamokin	.....	.....	.....
South Philipsburg	.....	.....	.....
Worth	.....	.....	.....
Smethport	.....	.....	.....
Keating	.....	.....	.....
Penn	.....	.....	.....
Chicora	.....	.....	.....
Briar Creek	.....	.....	.....
Centerhall	.....	.....	.....
Delaware	.....	.....	.....
Hartleton	.....	.....	.....
Ralpho	.....	.....	.....
Sayre	.....	.....	.....
Shinglehouse	.....	.....	.....
West Buffalo	.....	.....	.....
Chippewa	.....	.....	.....
Penn Hills	.....	.....	.....
Burrell	.....	.....	.....
Baden	.....	.....	.....
Hempfield	.....	.....	.....
Peters	.....	.....	.....
S. Fayette City	.....	.....	.....
Lower Lackawana	.....	.....	.....
White Haven	.....	.....	.....
Rush	.....	.....	.....
Dennison	.....	.....	.....
East Penn	.....	.....	.....
Ross	.....	.....	.....
Sugerloaf	.....	.....	.....
Conyngham	.....	.....	.....
Greater Pottsville	.....	.....	.....
North Union	.....	.....	.....
North Manheim	.....	.....	.....
Wayne	.....	.....	.....
Haxle	.....	.....	.....
Snyder	.....	.....	.....
Straban	.....	.....	.....
Hermitage	.....	.....	.....
Farrell	.....	.....	.....
N & S Shenango	.....	.....	.....
Ridgeway	.....	.....	.....
North Warren	.....	.....	.....
S.W. Delaware	.....	.....	.....
Avondale	.....	.....	.....
Rhode Island:			
Bristol	74	43	117
Burillville	.....	.....	.....
E. Providence	.....	.....	.....
NBWQMDC	.....	.....	.....
Narragansdett	.....	.....	.....
New Shoreham	.....	.....	.....
S. Kingstown	.....	.....	.....
N. Kingstown	.....	.....	.....
Woonsocket	.....	.....	.....
N. Smithfield	.....	.....	.....
Central Falls	.....	.....	.....
Johnston	.....	.....	.....
Cranston	.....	.....	.....
Warwick	.....	.....	.....
Coventry	.....	.....	.....
South Carolina:			
Georgetown	156	116	272
Grand Strand	.....	.....	.....
Richland	.....	.....	.....
Taylors	.....	.....	.....
Lake City	.....	.....	.....
St. Andrews	.....	.....	.....
Saluda	.....	.....	.....
Blackville	.....	.....	.....
Jonesville	.....	.....	.....
Aiken	.....	.....	.....
Bamberg	.....	.....	.....
Allendale	.....	.....	.....
Pickens	.....	.....	.....
Beaufort	.....	.....	.....
Mt. Pleasant	.....	.....	.....
Western Carolina	.....	.....	.....
Sumter	.....	.....	.....
Cayce	.....	.....	.....
James Island	.....	.....	.....
Lexington	.....	.....	.....
Florence	.....	.....	.....
Spartanburg	.....	.....	.....
Chesnee	.....	.....	.....
Lancaster	.....	.....	.....
North Myrtle Beach	.....	.....	.....
Oconee	.....	.....	.....
Barnwell	.....	.....	.....
Pendleton	.....	.....	.....
Blacksburg	.....	.....	.....
Ridgeland	.....	.....	.....
Cowpens	.....	.....	.....
Kingstree	.....	.....	.....
James Island	.....	.....	.....
Denmark	.....	.....	.....
Batesburg	.....	.....	.....
Hanahan	.....	.....	.....
Sullivan's Island	.....	.....	.....
South Dakota:			
Aberdeen	25	12	37
Belle Fourche	.....	.....	.....
Box Elder	.....	.....	.....
Brandon	.....	.....	.....
Britton Dev. Corp	.....	.....	.....
Brookings	.....	.....	.....
Chamberlain	.....	.....	.....
Custer	.....	.....	.....
Doland	.....	.....	.....
Elk Point	.....	.....	.....
Fort Pierre	.....	.....	.....
Freeman	.....	.....	.....
Groton	.....	.....	.....
Kadoka	.....	.....	.....
Lake Byron	.....	.....	.....
Lake Poinsett	.....	.....	.....
Lead	.....	.....	.....
Lead-Deadwood	.....	.....	.....
Leola	.....	.....	.....
Madison	.....	.....	.....
Mission	.....	.....	.....
Rapid City	.....	.....	.....
Salem	.....	.....	.....
Sioux Falls	.....	.....	.....
Sisseton	.....	.....	.....
Spearfish	.....	.....	.....
Tea	.....	.....	.....
Watertown	.....	.....	.....
Webster	.....	.....	.....
Worthing	.....	.....	.....
Yankton	.....	.....	.....
Tennessee:			
Murfreesboro	50	50	100
Memphis	.....	.....	.....
Chattanooga	.....	.....	.....
Nashville	.....	.....	.....
Texas:			
Bellaire	320	.....	320
Atlanta	.....	.....	.....
Deer Park	.....	.....	.....
Hardin	.....	.....	.....
Heath	.....	.....	.....
Houston	.....	.....	.....
Lampasas	.....	.....	.....
Montgomery	.....	.....	.....
Terrell	.....	.....	.....
Van	.....	.....	.....
Alvarado	.....	.....	.....
Brownwood	.....	.....	.....
Jasper	.....	.....	.....
Jefferson	.....	.....	.....
League City	.....	.....	.....
Navasota	.....	.....	.....
Pine Village	.....	.....	.....
Texas A & M	.....	.....	.....
Dallas	.....	.....	.....
Lubbock	.....	.....	.....
Plains	.....	.....	.....
Dalhart	.....	.....	.....
Nazareth	.....	.....	.....
Woodville	.....	.....	.....
Nocona	.....	.....	.....
Collinsville	.....	.....	.....
Lumberton	.....	.....	.....
Groom	.....	.....	.....
Rankin	.....	.....	.....
Hidalgo	.....	.....	.....
Bayside	.....	.....	.....
Abilene	.....	.....	.....
Venus	.....	.....	.....
Edna	.....	.....	.....
Hallsville	.....	.....	.....
Marshall	.....	.....	.....
Deaf Smith	.....	.....	.....
Sealy	.....	.....	.....
Harlingen	.....	.....	.....
Somerset	.....	.....	.....
New Waverly	.....	.....	.....
Willis	.....	.....	.....
Leonard	.....	.....	.....
Panhandle	.....	.....	.....
Saint Jo	.....	.....	.....
Farmers Branch	.....	.....	.....
Lyford	.....	.....	.....
Kirbyville	.....	.....	.....
Stinett	.....	.....	.....
Matagorda	.....	.....	.....
Crockett	.....	.....	.....
Sweetwater	.....	.....	.....
Nacogdoches	.....	.....	.....
Zavalla	.....	.....	.....
Hillsboro	.....	.....	.....
Orange	.....	.....	.....
New Ulm	.....	.....	.....
Bellmond	.....	.....	.....
Burkburnett	.....	.....	.....
Decatur	.....	.....	.....
Frankston	.....	.....	.....
Granbury	.....	.....	.....
Kaufmann	.....	.....	.....
Lorenzo	.....	.....	.....
Mexia	.....	.....	.....
Rusk	.....	.....	.....
Victoria	.....	.....	.....
Whitesboro	.....	.....	.....
Utah:			
Central Valley	.....	22	22
Salt Lake City	.....	.....	.....
Tooele City	.....	.....	.....
Vermont:			
Charlotte	8	18	26
South Burlington	.....	.....	.....
Stowe	.....	.....	.....
Windsor	.....	.....	.....
Castleton	.....	.....	.....
Milton	.....	.....	.....
St. Albans	.....	.....	.....
Middlebury	.....	.....	.....
Virginia:			
(Definitive project list not yet available)	200	300	500
Washington:			
Seattle	790	197	987
Auburn	.....	.....	.....
Tumwater	.....	.....	.....
Tukwila	.....	.....	.....
Tacoma	.....	.....	.....
Port Townsend	.....	.....	.....
Oak Harbor	.....	.....	.....
Mercer Island	.....	.....	.....
Lynnwood	.....	.....	.....
Everett	.....	.....	.....
Lacey	.....	.....	.....
Port of Skagit	.....	.....	.....
Aberdeen	.....	.....	.....
Federal Way	.....	.....	.....
Skyway	.....	.....	.....
Cross Valley	.....	.....	.....
Quileute Tribe	.....	.....	.....
Havel Dell	.....	.....	.....
Val Vue	.....	.....	.....
Lake Chelan Reclamation	.....	.....	.....
Spokane	.....	.....	.....
Pullman	.....	.....	.....
Okanogan	.....	.....	.....
Napavine	.....	.....	.....
Moses Lake	.....	.....	.....
Leavenworth	.....	.....	.....
Kettle Falls	.....	.....	.....
Kennewick	.....	.....	.....
Kent	.....	.....	.....
Kelso	.....	.....	.....
Des Moines	.....	.....	.....
Bellingham	.....	.....	.....
Blaine	.....	.....	.....
Clark	.....	.....	.....
Milton	.....	.....	.....
Metropolitan Seattle	.....	.....	.....
Colville	.....	.....	.....
Sewage Treatment—48 projects	.....	.....	.....
CSO Reduction—8 projects	.....	.....	.....
NPS Control—52 projects	.....	.....	.....
West Virginia:			
Lubeck	49	30	79
N. Wayne	.....	.....	.....
Poca	.....	.....	.....
Bennwood	.....	.....	.....
Culloden	.....	.....	.....
Evans	.....	.....	.....

LIST OF STATE PROJECTS READY TO GO, WHICH COULD BE FUNDED IF ADDITIONAL FEDERAL FUNDS ARE PROVIDED—Continued

[In millions of dollars]

State and projects	Additional SRF funding needs		Total
	1993	1994	
Follansbee	.....	.....	.....
Guthrie	.....	.....	.....
Jaegar	.....	.....	.....
Glenville	.....	.....	.....
Thomas	.....	.....	.....
Meadow Bridge	.....	.....	.....
Wisconsin:			
114 projects identified (Available from AS/WPCA)	82	112	194
Total, 40 States reporting	4,283	4,224	8,507

Note.—Estimated total for 50 States and territories: Over $10,000,000,000.

IRRESPONSIBLE CONGRESS? HERE IS TODAY'S BOXSCORE

Mr. HELMS. Mr. President, the Federal debt run up by the U.S. Congress stood at $4,176,491,860,224.29 as of the close of business on Monday, February 1, 1993.

Anybody remotely familiar with the U.S. Constitution is bound to know that no President can spend a dime that has not first been authorized and appropriated by the Congress of the United States. Therefore, no Member of Congress, House or Senate, can pass the buck as to the responsibility for this shameful display of irresponsibility. The dead cat lies on the doorstep of the Congress of the United States.

During the past fiscal year, it cost the American taxpayers $286,022,000,000 merely to pay the interest on deficit Federal spending, approved by Congress, over and above what the Federal Government has collected in taxes and other income. Averaged out, this amounts to $5.5 billion every week, or $785 million every day, just to pay the interest on the existing Federal debt.

On a per capita basis, every man, woman, and child owes $16,259.86—thanks to the big spenders in Congress for the past half century. Paying the interest on this massive debt, averages out to be $1,127.85 per year for each man, woman, and child in America. Or, looking at it another way, for each family of four, the tab—to pay the interest alone—comes to $4,511.40 per year.

What would America's economic stability be today if there had been a Congress with the courage and the integrity to operate on a balanced budget? The arithmetic speaks for itself.

GAYS IN THE MILITARY

Mr. DURENBERGER. Mr. President, I rise today to address the question of homosexuals in the military. The specific question before us is: Will we approve the Clinton-Nunn proposal, and allow a 6-month period of study on the complex moral, legal, and administrative issues involved? I would urge a vote for the option that will do us the most credit as a deliberative body.

What we are addressing today is not the simple question of whether we approve or disapprove of the sexual orientation of certain individuals. We are discussing whether we have the right to deny some of these individuals the right to serve in the U.S. Armed Forces because of that status.

It is a fundamental principle of American Government that we must not discriminate against an individual for having a certain status—a certain gender, religion, sex, race, disability, or age. In civilian life, the Government can only legitimately prevent or punish conduct—behavior that society views, rightly or wrongly, as harmful to its own interests.

The military is recognized, appropriately in my view, as a special case. Military service does, in fact, require certain forms of discrimination—like restrictions on the role of women in combat, and the exclusion of some disabled persons.

In the present case, homosexuals have been expelled from the military absent any demonstration that they have actually engaged in homosexual conduct. What we have to determine is whether the status of being a homosexual—in and of itself—is sufficiently harmful in a potential military service member to warrant an exception to the rule that in civilian life we do not discriminate on the basis of status.

Is this a decision we have to make now? Yes and no. For each gay person facing disciplinary proceedings in the military, the answer is "Yes." For those who are investigating the tragic death of Seaman Allen Schindler in Japan, again, the answer is "Yes." But for the Americans who are desperately concerned about the economy, the budget deficit, and guaranteeing access to high quality health care and education, the answer is "No."

But the issue will not go away. President Clinton has put us on the track toward a date certain for the resolution of this problem. We can't duck it—so let's get to work on making the best decision we can.

It is in the interest of the Armed Forces of this country that we make a decision, but not an unconsidered decision. This issue affects the lives of millions of men and women currently in uniform, and also those we will need to attract to service in the future. We need to examine the potential consequences in detail—and come to a principled decision.

This Senator isn't prepared to decide today. We are nowhere near that stage yet. When any major change is contemplated in a huge organization of people, one with a varied, distinctive, and constantly changing mission, analysis of the real disruptions that are going to result—and whether they are so great that to risk them would be unwise.

This sort of analysis is precisely what we have lacked so far in the national discussion on gays in the military.

We also need to understand that in recent years, we have repudiated laws that discriminate against individuals in employment or public accommodation on the basis of their status—on the basis of stereotypes that relegate every individual to a pigeonhole. We have repudiated the spurious logic that goes, "All Polish people are stupid. I, Dave Durenberger, am Polish. Therefore, I am stupid. Therefore, do not hire me."

The days of Jim Crow—the days when it was acceptable to put up signs reading "No Irish Need Apply"—are over. Employment law now protects individuals from this kind of pigeonholing by status.

Again, we recognize that the military has the right to discriminate in certain cases. In some areas of discrimination, the military has reversed its opinion—in other areas, it has not. And for the next 6 months we will be examining whether the policy on homosexuals ought to be reversed.

What we need to determine is whether the status of homosexuality standing alone bestows on everyone in that category a set of behavior patterns that can't be modified by conduct regulation. Then, and only then, should status classification lead to blanket exclusion.

It is objected that having gays in the military would pose a serious threat to morale—that it would reduce the camaraderie, the bonding, and the trust that are necessary if soldiers are going to be an effective fighting team in combat. But it is acknowledged even by those who advance this line of argument that there are gays currently serving in the military. What evidence suggest that these gays have impaired the morale or fighting effectiveness of our Armed Forces.

I am not saying that there is no evidence proving this. I am merely saying that I have not seen it—yet. That's another reason why I think this 6-month delay will be extremely valuable—we need to find out if their acknowledged presence will reduce our military effectiveness.

It has also been objected that gays in the military might abuse positions of authority to engage in sexual harassment. Again, no evidence has been presented to demonstrate that these cases would be any more disruptive than the cases of heterosexual harassment that we already have to confront.

It would be truly perverse to draw the conclusion from the Tailhook scandal that heterosexual men or women ought to be excluded from the military. It would seem to me that if this were the sole objection, the appropriate solution is not to exclude people from the armed services, but to have a code of conduct and enforce it.

I recognize that there is undoubtedly more to this argument than I currently know. And I want to learn about it over the next 6 months.

I join my distinguished colleague, the senior Senator from Georgia, as well as the no less distinguished Chairman of the Joint Chiefs of Staff, General Powell, in hoping that the proposed 6 months of investigation will give us a better understanding of the serious objections that no doubt exist to the lifting of the ban.

Like Senator NUNN, I am making no commitment to support the full lifting of the ban when the 6-month investigation is over. In 6 months, I expect that we will have a better understanding of the real facts and issues involved—and thus be able to make that decision intelligently. In the meantime, I would modestly suggest that it would be appropriate for us to address other issues of national importance—such as economic growth and job creation, the Federal budget deficit, and the fundamental reform of U.S. health care.

GAYS AND LESBIANS IN THE ARMED FORCES

Mr. BAUCUS. Mr. President, from time to time, Congress and the President are forced to deal with issues that spark a wildfire of controversy, anger, and divisive debate among the American people. The admission of gays and lesbians into the our Armed Forces is clearly one such issue.

I believe, however, that the agreement between the President, the majority leader and the chairman of the Armed Services Committee offers a reasonable means of resolving this dispute.

Over the past few decades, this Nation can point with great pride to the progress we have made in stamping out bigotry, prejudice, and discrimination. While we have yet to eliminate these problems, we have made giant strides toward achieving equality under the law for all Americans.

Much of our national strength is drawn from our diversity. As Americans become more tolerant of each other, we come that much closer to realizing the true potential of this great Nation. We simply cannot afford to waste the talents and abilities of any of our fellow citizens.

As he grew up in the segregated South, President Clinton saw the ugly face of discrimination. He saw how it needlessly divided his home State and the entire Nation.

Perhaps in reaction and revulsion to what he saw as a young man, Bill Clinton's entire public career has been an exercise in bringing people together. This is a trait that will serve him well in the White House.

Moreover, I believe it is this desire—a desire to see Americans working together in the service of their country—that motivated the President to propose lifting the ban on gays in the military.

While there is room for legitimate disagreement with this proposal, its timing and execution, I do not believe there is any room for disagreement with the President's motives in proposing to lift the ban.

Moreover, contrary to what some opponents of lifting the ban contend, standing by the current policy is probably not a viable option. As Judge Hatter's ruling from last week shows, if Congress and the President fail to change the current policy, the courts are likely to force our hand—perhaps by issuing a very broad judicial decree.

For all these reasons, the current policy demands review. It may be unfair, unnecessary, and—most importantly—unconstitutional.

However, we must conduct this review in the most deliberate, thoughtful, and fair way possible. I believe the compromise before us today establishes a reasonable process to bring about a new policy accommodating our military leadership's reasonable concerns.

In contrast, with this clear lack of public consensus, a simple and abrupt lifting of the ban by Executive order would have created more problems than it solved.

Last week, the distinguished chairman of the Armed Services Committee, Senator NUNN, offered a very detailed and thoughtful statement on this subject. He raised a number of questions that merit answers before definitive action is taken to reverse the current policy. Let me review just a few of these unanswered questions:

What would be the impact of changing the current policy on recruiting, retention, and morale within our armed services?

What is the basis for the policy in light of contemporary trends in American society? As society changes in this regard, should our military services reflect those changes in society?

What has been the experience of our NATO allies and other nations around the world that allow gays and lesbians to serve in the military?

And what specific steps would be taken to safeguard the privacy expectations of heterosexual service men and women objecting to sharing living quarters and other facilities with homosexuals?

In closing, I urge caution. Until these questions can be satisfactorily answered, I believe it would be unwise to move beyond the carefully crafted compromise announced last week.

As part of this compromise, the Armed Services Committee will soon schedule hearings. These hearings will give the administration, the military, and individuals on all sides of this issue a chance to express their concerns.

Only when this factfinding process is completed will we be able to determine the exact appropriate course of action.

IN TRIBUTE TO COL. RICHARD D. CONN

Mr. GLENN. Mr. President, Col. Richard D. Conn, director for manpower and personnel for the North American Air Defense Command [NORAD] and U.S. Space Command [USSPACECOM], retired in January after more than 30 years of active duty in the U.S. Air Force. I would like to commend him for his outstanding military career and his dedicated service to his country and to the men and women of the Armed Forces.

Colonel Conn was born May 9, 1941, in Akron, OH. He graduated from Ohio State University in 1965 with a bachelor of science degree, cum laude, in personnel management. In 1971, he received a master of business administration degree from the University of Utah.

He enlisted in the Air Force in 1962, and was commissioned a second lieutenant in 1965 as a distinguished graduate of the Officer Training School Program. From December 1965 to May 1967 he served as personnel officer for the 703d Radar Squadron, at Texarkana, TX, and from November 1967 to May 1970 as chief, Consolidated Base Personnel Office at RAF Mildenhall, England.

From May 1970 to May 1974, Colonel Conn was assigned as associate professor of aerospace studies for AFROTC at the University of Akron, then as chief, Personnel Plans Division and chief, Faculty Assignments, Air University, Maxwell Air Force Base, AL, where he served until he was selected in 1976 to attend Air Command and Staff College, Maxwell Air Force Base, AL.

After graduation from Air Command and Staff College, he moved to Headquarters Air Force Manpower and Personnel Center, Randolph Air Force Base, TX, in July 1977, where he served first as special manning resource officer, then as executive officer to the Director of Assignments, and finally as chief, Support Officer Manning.

In June 1982, Colonel Conn reported to Headquarters Pacific Air Forces, Hickam Air Force Base, HI, as Deputy Director Personnel Plans. Departing in July 1986, as a newly promoted colonel, he reported to Headquarters U.S. Air Force, Washington, DC, where he served as chief, Promotion and Separation Policy Branch until August 1987, when he assumed the position of chief, Personnel Policy Division. He assumed his present position in U.S. Space Command in December 1989.

Colonel Conn is a graduate of Squadron Officers School; Air Command and Staff College, distinguished graduate; and the Air War College. He has received various awards, including the Legion of Merit, the Meritorious Service Medal with two Oak Leaf Clusters, and the Air Force Commendation Medal with one Oak Leaf Cluster.

Colonel Conn is married to the former Marilyn Scheatzle of Akron,

OH. They have three daughters, Laura, Deborah, and Rhonda.

In his outstanding performance in over more than 30 years of active duty, Colonel Conn has served his Nation and the Air Force well. We wish him and his family the best as he enters a well deserved retirement.

IN TRIBUTE TO THURGOOD MARSHALL

Mr. DODD. Mr. President, it is with great sadness that I rise today to remember Thurgood Marshall. With his passing, our Nation has lost a courageous champion of the principles which uphold our democracy: that all men are created equal and that they are endowed by their creator with certain inalienable rights.

Although he would eventually accomplish great things, Thurgood Marshall's origins were humble. He was the great grandson of a slave brought to America from Africa's Congo region. His father toiled as a steward at an all-white yacht club and his mother taught elementary school. Born in 1908, Thurgood Marshall grew up in the segregated South, and he learned quickly that the promise of America—liberty and justice for all—was but a faint dream for far too many citizens.

With a fighting spirit instilled in him by his parents, Thurgood Marshall dedicated himself to the battle against racial oppression. He obtained his law degree from Howard University, and became chief counsel for the NAACP Legal Defense and Educational Fund. Although his legal victories have become enshrined in America's history, we must not forget the hardships and dangers he faced. During the 1930's and 1940's, he risked his life traveling through the South to try cases against segregation. He was threatened, and some tried to humiliate him, but his indomitable spirit prevailed and we are a better nation for it.

Undoubtedly, Thurgood Marshall's greatest victory was the Supreme Court's decision in Brown versus Board of Education. That decision freed children across the Nation from the chains of the separate but equal doctrine and ushered in a new era of multicultural education.

Of course, after the decision in Brown versus Board of Education, much work remained in the battle against racial injustice. Thurgood Marshall continued his efforts as a judge on the U.S. Court of Appeals for the Second Circuit, through his tenure as President Johnson's Solicitor General, and most importantly, as the first black Justice on the U.S. Supreme Court.

I am proud to note that my father, Senator Thomas Dodd, played a role in Thurgood Marshall's elevation to the Supreme Court. My father was one of Thurgood Marshall's staunchest supporters and helped shepherd his nomination through the confirmation process.

During his years on the Supreme Court, Thurgood Marshall spoke eloquently on behalf of the poor and the weak, and he would not let his colleagues forget the work that needed to be done to make our laws more just. In his opinion in the Bakke case, written in 1978, he observed that:

> The position of the negro today in America is the tragic but inevitable consequence of unequal treatment. * * * In light of the sorry history of discrimination and its devastating impact on the lives of negroes, bringing the negro into the mainstream of American life should be a state interest of the highest order. To fail to do so is to ensure that America will forever remain a divided society.

Fundamentally, Thurgood Marshall leaves a legacy of hope. The hope that through peaceful change our Nation will provide every citizen with an equal opportunity to realize his or her dreams. To honor him, we must rededicate ourselves to the battle against injustice and inequality, and strive to mend the divisions in our society.

Mr. DOLE. Mr. President, my understanding is leader time has been reserved and that I still have a few minutes of leader time. I ask that I be permitted to use that time.

The PRESIDING OFFICER. The Republican leader has 7 minutes.

SALUTING WINFIELD AND McPHERSON, KS: "TOP SMALL TOWNS IN AMERICA"

Mr. DOLE. Mr. President, those of us who are fortunate enough to call Kansas home know that the Sunflower State has a lot to offer. Our State is the breadbasket of the world. We are home to the world's aircraft capital. We are a State of tremendous educational resources and national championship athletic teams. Kansas is a State blessed with majestic natural beauty and superb recreation resources. And if you are looking for Main Street America, Kansas cannot be beat.

That is why I am proud that two great Kansas towns have earned a spot on list of "The 100 Best Small Towns in America" in a just-published book. I know all Members of the Kansas congressional delegation join me in congratulating the people of Winfield, KS, and the people of McPherson, KS, for winning this national recognition, and for making their towns such great places to live, work, and raise families. After all, Main Street America is paved with the warm hospitality, the good deeds, the patriotism, and the work ethic of its people.

Winfield is a town of 12,000 people, located about 50 miles southeast of Wichita. It is the home of great educational, cultural, and recreation opportunities, including Southwestern College, the nationally renowned Walnut Valley Festival, the Art in the Park Program, the Kanza Days Festival, summer concerts, and one of America's oldest continuous city bands. And the list goes on and on.

McPherson, a town of 12,800 Kansans located about 30 miles northeast of Hutchinson, boasts among other things a strong industrial base and economic diversity, a low crime rate, low unemployment, outstanding recreation facilities, 29 different churches, and a May Day parade that attracts 30,000 people to line the streets.

The people of Winfield and McPherson will tell you that small town America is not without its share of problems. Winfield, for example, faces a potential crisis should the State hospital shut down. But I suspect most would also tell you they would not want to live anywhere else. If I know anything about Kansas, I know that when times are tough, our people are tougher.

Mr. President, if you ask me, Kansas could fill the entire list of "100 Best Small Towns in America" and then some, but Kansans are fair people, and we'll let other States share in the limelight.

I would like to congratulate mayor Judy Showalter of Winfield, mayor Zeke Anderson of McPherson, and the good people at the local chambers of commerce. But first and foremost, I know my colleagues join me in congratulating the proud people of Winfield and McPherson who every day show America the meaning of Main Street USA.

FINAL REPORT OF THE U.S. SENATE SELECT COMMITTEE ON POW/MIA AFFAIRS COMMITTEE

Mr. DOLE. Mr. President, as an ex officio member of the U.S. Senate Select Committee on POW/MIA Affairs, I am pleased that the final report has been issued and agreed to by its six Republican and six Democrat Senators. This committee has accomplished the most exhaustive and comprehensive investigation that has ever been conducted on this highly emotional issue. The members of the committee and its professional staff are to be praised and congratulated. Their extraordinary efforts and long hours of work will provide meaningful answers on this most important issue for the American people.

No doubt about it, the committee faced a long and difficult 15-month investigation. It is all but impossible to go back 20 years in history and recreate the exact setting of late 1972 and early 1973. All too often we want to rewrite history the way we would have preferred it to have been, as opposed to the way it really was. But some of us were there then, and are here today, involved with the issue 20 years later.

When one reads the executive summary in detail the significant highlights of the final report are:

Given the committee's finding, the question arises as to whether it is fair to say American POW's were knowingly abandoned in Southeast Asia after the war. The answer to that question is clearly "no."

While the committee has some evidence suggesting the possibility a POW may have survived to the present, and while some information remains yet to be investigated, there is, at this time, no compelling evidence that proves that any American remains in captivity in Southeast Asia.

Part of the pain caused by this issue has resulted from rumors and Hollywood fiction about hundreds or thousands of Americans languishing in camps or bamboo cages which only added to the suffering of American families. The committee, however, found:

The circumstances surrounding the losses of missing Americans render these reports arithmetically impossible.

Another important myth that is put to rest is the conspiracy theory. Witness after witness was questioned by the committee about a conspiracy either to leave POW's behind or to conceal knowledge of their fates. Not one single piece of evidence was produced.

It is again disappointing—but not surprising—to note that with all of the press articles in the last several months on this subject, so few have truly sought out the facts as well as the history as it really happened. It must be again recorded that between 1969 and 1973 both President Nixon and Dr. Kissinger waged an uphill battle to keep military pressure on Hanoi until the North Vietnamese finally agreed both to return the POW's and to account for the MIA's. Often, President Nixon and Dr. Kissinger were accused of warmongering rather than attempting to achieve "peace with honor."

We must remember the domestic climate of the times with the numerous antiwar movement rallies around the country. During this period, Congress passed numerous resolutions calling for an immediate U.S. withdrawal from Southeast Asia. It is important to remember that in the caucuses in December 1972 of the newly elected Democrat majority in both the House and Senate, votes were taken to once again indicate a strong movement to reduce or eliminate our military presence in Southeast Asia. As we know, this was accomplished within a few months in 1973.

This Senator offered an amendment that would have given the President the authority to resume military action if the North Vietnamese did not provide a full accounting of our missing heros. History recorded a clear rejection of this on May 31, 1973, by a vote of 56 to 25. That vote sent a most important signal to the North Vietnamese that our President would not be able to play a strong hand in future negotiations as his power had been eroded. These plain facts cannot be rewritten or left unsaid in any correct account of this issue.

Although the final report of the committee has been issued, the work is not finished. I call upon Vietnam, Laos, and Cambodia to be immediately forthcoming with all information in their possession. Furthermore, I also call upon the Department of Defense to continue to seek all answers and respond quickly to all new leads. The Senate committees that will now have jurisdiction on this issue must continue to closely monitor all related developments.

On another note, the committee received testimony from numerous POW/MIA organizations. One of the finest of these organizations is the Red River Valley Fighter Pilots Association which is headquartered in Derby in my home State of Kansas.

The executive director, Mrs. Patti Sheridan, was an excellent spokesperson for her organization. For years they have been providing scholarships to children of POW/MIA servicemen from the Vietnam war. I am proud to have been associated with the work of this group and urge anyone who is interested in supporting this wonderful cause to contact my office.

I would also like to call attention to the contribution of Sybil Stockdale, the wife of Adm. James Stockdale, for her courage as the wife of a POW and her eloquence in testifying before the select committee. I began working with her on POW/MIA issues 20 years ago and I can attest to her contributions to this cause. Sybil and Jim Stockdale are both genuine American heroes.

A special tribute must be given to Gen. John W. Vessey, Jr., U.S. Army, retired, who, since 1987, has been the Presidential Emissary to Vietnam for POW/MIA Affairs, for once again giving his outstanding service to his country. General Vessey's efforts helped create the improved atmosphere of cooperation with Vietnam on POW/MIA matters.

Again, I congratulate the Members and professional staff of the U.S. Senate Select Committee on POW/MIA Affairs for their tireless efforts on this issue. Twenty years is a long, long time. The committee has made a significant and worthwhile contribution to the American people.

THE DEATH OF CHARLES "LEW" DOLLARHIDE

Mr. MURKOWSKI. Mr. President, in addition to supporting the confirmation of Hershel Gober as Deputy Secretary, I also speak in memory of Charles L. Dollarhide, a dedicated public servant who died on January 28. Lew Dollarhide became Director of VA's Education and Rehabilitation Service in 1980 after a 21-year career of service to America's veterans including 6 years as Deputy Director of Education Service. He served as Director for the next 6 years until his retirement in 1986.

Mr. President, I believe the GI bill education program may have done more to transform this country than any other program of the Government. In opening the doors to higher education to millions of Americans who would have had no other chance to further their education, the GI bill did much to transform our Nation's ideal of opportunity from a promise into a reality. We see the effects of that reality in a veteran population which is both better educated and more prosperous than their nonveteran counterparts.

When we in the Congress make policy, confident in the knowledge that the GI bill keeps the door to opportunity open for America's veterans, we incur a debt to Lew Dollarhide for his role in creating that reality.

Every day, in every community of our country, American veterans enjoy the fruits of their education without knowledge of the efforts of public servants like Lew Dollarhide who made their GI bill possible.

Mr. President, Lew Dollarhide did not dedicate his talent and his energy to his fellow veterans in order to create an indebtedness on the part of the Congress or the veterans he served. He did it because he was a dedicated professional. That career of professionalism created a monument to his memory far more lasting than any words carved in stone or recorded in the CONGRESSIONAL RECORD. His monument may be found in the lives and careers of the millions of veterans whose lives he touched through the GI bill.

I believe I speak for all who knew him in mourning his death.

I thank the Chair.

CONCLUSION OF MORNING BUSINESS

The PRESIDENT pro tempore. Morning business, under the order, has expired.

FAMILY AND MEDICAL LEAVE ACT OF 1993

The PRESIDENT pro tempore. Under the order, the Senate will resume consideration of S. 5, which the clerk will report.

The assistant legislative clerk read as follows:

A bill (S. 5) to grant family and temporary medical leave under certain circumstances.

The Senate resumed consideration of the bill.

Pending:

Craig amendment No. 4, in the nature of a substitute.

The PRESIDENT pro tempore. Under the previous order, the Senator from

Washington [Mr. GORTON] is recognized to offer up to two amendments, on which there should be a total time limitation of 30 minutes equally divided and controlled.

Mr. GORTON. Mr. President, may I inquire whether copies of my amendments are at the desk?

The PRESIDENT pro tempore. The Senator has four amendments at the desk. The Chair is not aware which amendment the Senator from Washington intends to offer at this point.

Mr. GORTON. Under the circumstances, Mr. President, I send two amendments to the desk so we will be clear what they are.

The PRESIDENT pro tempore. Which amendment does the Senator wish to offer at this moment?

AMENDMENT NO. 9

(Purpose: To establish provisions relating to key personnel)

Mr. GORTON. Mr. President, I will offer at this moment the key personnel amendment.

The PRESIDENT pro tempore. The clerk will state the amendment.

The bill clerk read as follows:

The Senator from Washington [Mr. GORTON] proposes an amendment numbered 9.

Mr. GORTON. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDENT pro tempore. Without objection, it is so ordered.

The amendment is as follows.

On page 19, lines 11 and 12, strike "HIGHLY COMPENSATED EMPLOYEES" and insert "KEY PERSONNEL".

On page 19, line 15, strike "described in paragraph (2)" and insert "who is designated under paragraph (2)(A), or, if no employee is so designated, who is deemed to be designated under paragraph (2)(B)".

On page 20, strike lines 1 through 6, and insert the following:

(2) AFFECTED EMPLOYEES.—

(A) DESIGNATED EMPLOYEES.—

(i) IN GENERAL.—The employee may designate as key personnel up to 10 percent of the eligible employees of the employer at a facility, or employed within 75 miles of the facility.

(ii) BASIS.—An employer shall not designate key personnel on the basis of age, race, color, sex, or national origin, or for the purpose of evading the requirements of this title. No employer may designate an eligible employee as a member of the key personnel of the employer after the employee gives notice of intent to take leave pursuant to section 102.

(iii) MANNER.—Designations of employees as key personnel shall be in writing and shall be displayed in a conspicuous place described in section 109(a).

(iv) EFFECTIVE DATE.—Any designation made under this subparagraph shall take effect 30 days after the designation is issued and may be changed not more than once in any 12-month period.

(B) EMPLOYEES DEEMED TO BE DESIGNATED.—Until an employer designates key personnel under subparagraph (A), an eligible employee who is among the highest paid 10 percent of the employees employed by the employer within 75 miles of the facility at which the employee is employed shall be deemed to be designated as a member of the key personnel of the employer.

Mr. DODD. Mr. President, parliamentary inquiry.

The PRESIDENT pro tempore. The Senator will state the parliamentary inquiry.

Mr. DODD. Just for clarification, these amendments were not submitted last night. I inquire of the Chair. I believe that to be the case. So the fact is that these four amendments at the desk are not under consideration, but rather the amendments the Senator has submitted are under consideration.

Mr. GORTON. The two amendments I submitted right now I believe are identical to two of the four that were at the desk last night. Simply in order not to have a long conversation here, I sent the copies up.

The PRESIDENT pro tempore. The Senator from Washington.

Mr. GORTON. Mr. President, this amendment, which is based on provisions in the family leave law which has been in effect in the State of Washington since 1989, will alter the provision regarding highly compensated employees. The bill in its present form allows employers to deny reinstatement under certain circumstances to certain key employees, which the bill effectively defines as those who are in the highest paid 10 percent of all employees.

The purpose of this amendment is not to extend the number of employees affected by the exemption, but to allow a certain degree of flexibility on the part of employers in designating who those exempt employees shall be. It is obvious, and this is most particularly true in a small business, that the key employees, the 10 percent most important employees to a given employer, may not necessarily be identical to the 10 percent who are of the most highly compensated. For example, as I stated last night, the highest paid employees may very well be sales people, people who work on commission. It may vary from month to month or year to year who the highest paid employees are. But they may not be the most important. If all of the highest paid employees are in one section of an employer's work force, it may very well be the head of another section, the chief financial officer, for example, may be more a key to the operation of the business than the eighth or ninth most highly compensated sales person.

So in order to give a slightly larger degree of flexibility to the employer, this allows the employer to make a designation. The designation must be made before an application for leave is made. It cannot be ex post facto and it can only be changed once in every 12-year period.

In addition, however, this amendment includes a provision which prevents the designation of such employees on the basis of race, religion, creed, and the like, a provision which does not exist in the bill as it is set forth. If no designation is made, the highest 10-percent compensation rule, which is in the bill, already applies. It does seem reasonable, however, to this Senator that this degree of flexibility, particularly with respect to relatively small businesses, be allowed an employer.

It is our understanding, the understanding of this Senator from having discussed the issue with the Washington State Department of Employment Security and Labor and Industries that no complaint has ever been filed with respect to the misuse of this provision. In other words, it now has a 3- to 4-year history. This portion of the family leave in the State of Washington works, and I commend it to the sponsors as a friendly rather than unfriendly amendment to this bill and hope that it can be accepted.

The PRESIDENT pro tempore. Who yields time?

Mr. DODD. I yield 3 minutes, Mr. President, to the Senator from Washington.

The PRESIDENT pro tempore. The Senator from Washington [Mrs. MURRAY] is recognized for 3 minutes.

Mrs. MURRAY. Thank you, Mr. President. Mr. President, I rise today to oppose this amendment, with all due respect to my colleague from the State of Washington and his attempt to look at this bill in terms of making it better. However, having been one of the original sponsors and persons who worked on this bill from the State of Washington, knowing all of the conversations, the intent, and the work on it, I would like to respond to my colleague from the State of Washington.

The key personnel language that is in the State of Washington bill was an intense compromise, after much work, that came at the very end of the session and was not agreed upon by a lot of people. We came back several times to work on the family leave legislation over the last several years, but our determination was that great progress was being made here in Congress and that as a State, we wanted to wait and see what happened in the U.S. Senate and Congress and see what passed out of here, before we came back to amend our legislation in a way that would work better for us.

I think it is very clear to me, having read the legislation here and having worked on the legislation from the State of Washington, that this is a much better written bill and I strongly support it. In fact, I talked with the Governor's office yesterday and he also opposes this amendment which is put in front of us and feels that from the State of Washington perspective, that the national legislation which is being proposed is much better language.

I have some real concerns in changing the key personnel language because this bill was written to ensure that middle-income, low-wage workers

would be allowed family leave. If we change the key personnel provision to allow an employer to designate any 10 percent, the employer could, in fact, designate front office personnel, who often tend to be younger women who are most likely to take pregnancy leave and who would most likely be affected by this bill and who certainly most deserve to have this bill passed.

Although I would like to think that all the businesses out there would not do that, it is a concern of mine that we write this in a good way so that we send a strong message that this bill is written to help those people who most need it and deserve it. The way it is written, with key personnel being the top 10 percent, I think effectively makes that happen.

I am also very concerned that this bill has been debated, compromised, worked on for many, many years in the Senate and certainly back in my State legislature. I think it is imperative that we do not amend it at the 11th hour without having consultation from the many groups and Senators who have been involved in it; in fact, we may find ourselves in litigation if we have not looked seriously at the language.

I believe that the language of the bill is absolutely excellent, and I strongly oppose this amendment.

The PRESIDENT pro tempore. The Senator's 3 minutes have expired.

Mr. KENNEDY addressed the Chair.

Mr. DODD. I yield to the Senator from Massachusetts 3 minutes.

The PRESIDENT pro tempore. The Senator from Massachusetts [Mr. KENNEDY] is recognized for 3 minutes.

Mr. KENNEDY. Mr. President, I listened with great interest to the comments of the Senator from Washington in terms of bringing that information to the Senate which I find extremely persuasive. I understand, and I would be interested if the floor manager would agree, that the addition of this provision, of the 10-percent exclusion was really added as a result of the request of a number of employers and in the attempt of the Senator from Connecticut [Mr. BOND] and others to try to deal with very specific kinds of requests and that it was the employers who made the representation that they felt this would meet their particular needs; that it was basically a response to the employer community generally that this adjustment was made in the legislation to permit the employers to have the 10-percent designation.

Furthermore, if I understand the provision correctly, there is no criteria that is established in the amendment of the Senator from Washington. So when the employee joins a particular company they would not know whether they could be designated or would not be designated or designated one year and not designated another. So they have no predictability, no certainty, no understanding.

We do not do that with regards to minimum wage or workmen's compensation or with regards to safety in the workplace. This seems to me to be a benefit of that different dimension.

I would be interested to know, in terms of the legislative history and how the chairman of the committee approached this issue, whether my understanding is correct.

Mr. DODD. Mr. President, I say to my colleague from Massachusetts he is absolutely correct. This was a provision that was added in a very positive and constructive amendment which was suggested by the Republican Congresswoman from the State of New Jersey, MARGE ROUKEMA, who specifically raised the issue of the employee provision. Senator BOND also was a strong supporter of it, and so we crafted that language.

I would say to my colleague from Massachusetts he is absolutely correct. No system of selection is absolutely perfect. I suppose the suggestion, Mr. President, might have been why not on a seniority basis—those people who have worked for the company the longest would be the ones exempt—or possibly leave it up to a collective-bargaining agreement; let them work that out somehow.

Salaries is a third. My colleague from Washington has suggested a fourth. So you could pick and choose.

It was the consensus of those who worked very long on this legislation that this was probably the least objectionable process because it would allow for a certain predictability, a certain certainty that the Senator from Massachusetts has just identified, rather than allowing this to be left totally arbitrary from year to year where people would not have a sense of security.

I agree with the Senator; there are those who want to call this a benefit. This is a minimum labor standard. There is a significant difference between benefits and minimum labor standards. As the Senator has pointed out, to say, for instance, that we would apply minimum wage, occupational safety standards, child labor laws, and a variety of others arbitrarily, as to who would be covered under those by the employer, would completely change the nature of what we are trying to accomplish.

Mr. KENNEDY. I thank the Senator. I think the explanation is enormously compelling, and for the reasons he has outlined the amendment of the Senator from Washington I hope will not be accepted.

The PRESIDENT pro tempore. The time of the Senator from Massachusetts has expired.

Mr. GORTON addressed the Chair.

The PRESIDENT pro tempore. The Senator from Washington [Mr. GORTON].

Mr. GORTON. Mr. President, I have listened with interest and with a certain degree of sympathy with regard to the three sets of remarks on the other side of this issue. I am most moved by the abstraction of their sets of ideas and on the tenuous relationship between the arguments as to what happens in the real world and real businesses with real people.

I certainly agree with the Senator from Connecticut, who has worked for so many years on this bill, that having the degree of flexibility which is added to the bill by allowing an exemption of 10 percent of most important employees from some of the strictures of the bill is significant and is important and is particularly important to small businesses. There is no question but that that is the case. The question is how do you define who those 10 percent most important employees are.

It seems overwhelmingly logical that they are the 10 percent of the employees whom the employer thinks are the most vital to the conduct of his business.

The use of the 10 percent most highly compensated is simply a short hand by which to reach that conclusion, but it is not the best way of reaching the conclusion.

This is not something that is going to be changed rapidly. It is required to be set out in writing. It is required that it not be changed more than once a year. It is no less certain than the 10 percent most highly compensated employees.

In most business enterprises compensation is highly variable. Not every employee works on a salary. There are bonuses. There are incentive programs. There are commission sales people. And there is no more certainty in a situation which says that the exemption applies only to the 10 percent most highly compensated than there is to any other 10-percent rule.

So if we are truly concerned with allowing the greatest degree of flexibility within the parameters of the social program, we should do so. We have the example of the State of Washington. Obviously, this is a matter which was debated in that legislature, but now that State has had the experience of 3½ years operating under exactly the rules we propose here and not a single complaint has been filed about their misuse. What could be more important than experience.

Mr. KENNEDY. Will the Senator yield for a question? Will the Senator yield me a minute?

Mr. DODD. Mr. President, I yield 1 minute.

The PRESIDING OFFICER (Mr. LIEBERMAN). The Senator from Connecticut yields 1 minute to the Senator from Massachusetts.

Mr. KENNEDY. Will the Senator yield for a question?

Mr. GORTON. Yes.

Mr. KENNEDY. What if the employer designates, say, in January as a matter

of course, and then the next January comes around and he finds out that two of the employees happen to be pregnant. Is there anything in the amendment of the Senator to prohibit that employer from changing the designation to include those two employees?

Mr. GORTON. The employer cannot make a change after a request for leave has been filed.

Mr. KENNEDY. I am saying, under the Senator's amendment, you could designate once a year, am I correct?

Mr. GORTON. That is correct.

Mr. KENNEDY. So the employer designates in January and that goes on for 1 year. Then the next January comes around and they can designate again, can they not?

Mr. GORTON. That is correct.

Mr. KENNEDY. Is there any prohibition in the amendment for a particular employer who says I am going to designate the secretary in the front room and the clerk typist in another room, that they will be part of the 10 percent, is there anything in the amendment of the Senator that prohibits that?

Mr. GORTON. There are two things in the amendment that make it——

Mr. KENNEDY. Can the Senator specify where in the amendment that is prohibited?

Mr. GORTON. Highly unlikely.

Mr. KENNEDY. I cannot hear the Senator. Did he say yes or highly unlikely?

Mr. GORTON. If the Senator will allow me to answer the question, this Senator will be happy to do so.

The PRESIDING OFFICER. The time yielded to the Senator from Massachusetts has expired.

Mr. GORTON. The designation can be made once a year. The designation, however, cannot impact an employee who has already made a request for leave, which I would assume under the conditions announced by the Senator from Massachusetts would clearly be the case. The individual knows that she is pregnant. She has asked for the leave. You cannot make a redesignation of the people to whom it applies after that takes place. Moreover, since we have added the prohibition that an employer shall not designate key personnel on the basis of age, race, sex, or national origin, it would seem to me that such a punitive designation would almost certainly be a violation of the antisex discrimination provisions.

Mr. KENNEDY. Will the Senator yield 30 seconds more?

Mr. DODD. I yield 30 more seconds.

Mr. KENNEDY. In the amendment, the individual only has to make the application 30 days prior to the time of the leave. There are instances, for example, that a woman might not understand she has an ectopic pregnancy. Just to receive the good assurances of the Senator from Washington of his own judgment that this may fall in terms of the discrimination based upon gender is not terribly reassuring particularly when all the most recent reports across the country demonstrate that time in and time out women who are pregnant are discriminated against as a general rule in our society and have difficulty retaining their jobs.

Mr. President, this amendment is really filled with loopholes and does not deserve support.

Mr. DODD. Mr. President, I yield myself 1 minute to conclude this.

The junior Senator from Washington, who was very much involved, I might point out, in the debate in her own State legislature when the family medical leave legislation was being adopted by the State of Washington and is intimately involved and aware of how the State of Washington resolved this issue, I think brings vital testimony to this issue and the ones that will follow.

Let me just say in conclusion, if I can, Mr. President, that there is no perfect system. This is not a perfect system. What we have tried to do is respond to the request of employers in this country who said we would like to designate 10 percent of our key employees. We responded positively to that. We wanted to make sure we struck a balance.

When Congresswoman ROUKEMA and Senator BOND and others came, we accepted this idea, we accepted this particular system by which we would designate those 10 percent. Is it a perfect system? No. But it has gone through a significant process over a number of years with a lot of people working to come to this conclusion.

I urge with all due respect the rejection of the amendment.

Mr. GORTON. Mr. President, I agree with the remarks of the Senator from Connecticut. I point out only that there is a difference in a democratic debate and the real world. The Senator from Massachusetts brings up all kinds of horrors. The Senator from Connecticut says we have worked this out; that is to say we here in Congress.

This amendment is based on a law which actually exists in a State with 5 million people. It has been on the books for 3½ years. No complaint has ever been filed with the relative State agency about the concerns raised by the Senator from Massachusetts. No complaint has ever been filed with respect to any of the objections of the Senator from Connecticut.

It seems to me that experience in the real world should be touted as having somewhat more weight than abstract objections by a group of people not immediately concerned with the problem.

Mr. President, I am willing to yield the remainder of my time on this amendment.

Mr. DODD. Mr. President, I do not know if there is any allocation of time. I think both amendments would be considered in half an hour.

The PRESIDING OFFICER. The Senator from Connecticut is correct. The Senator from Washington was allocated a half-hour, and has 5 minutes and 24 seconds remaining for the purpose of introducing the second amendment.

Mr. GORTON. Mr. President, the better course of wisdom would be that I call up the second amendment.

AMENDMENT NO. 10

(Purpose: To establish provisions relating to notice)

Mr. GORTON. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Washington [Mr. GORTON] proposes an amendment numbered 10.

Mr. GORTON. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 13, strike lines 14 through 24 and insert the following:

(1) REQUIREMENT OF NOTICE.—

(A) IN GENERAL.—

(i) NOTICE.—In any case in which the necessity for leave under subparagraph (A) or (B) of subsection (a)(1) is foreseeable based on an expected birth or placement, the employee shall provide the employer with not less than 30 days' written notice, before the date the leave is to begin, of the employee's intention to take leave under such subparagraph.

(ii) DATES; SCHEDULE.—Such notice shall state the dates during which the employee intends to take leave or provide a schedule under which the employee intends to take intermittent or reduced leave.

(B) EXCEPTIONS.—The employee shall take the leave described in subparagraph (A)(i) in accordance with the dates or schedule stated in the notice unless—

(i) the birth is premature;

(ii) the employee must care for a son or daughter because the mother is so incapacitated due to the birth that the mother is unable to care for the son or daughter;

(iii) the employee takes physical custody of a child being placed for adoption at an unanticipated time and is unable to give notice 30 days in advance of such time; or

(iv) the employer and employee agree to alter the dates of leave, or the schedule of leave, stated in the notice.

(C) REVISED DATE OR SCHEDULE.—In a case referred to in subparagraph (B), the employee must give such notice of revised dates during which the employee intends to take the leave, or a revised schedule under which the employee intends to take the leave, as is practicable, but at least 1 workday of notice before the date the leave is to begin.

On page 14, line 13, insert "written" after "days'".

On page 14, line 18, after "practicable" insert the following: ", but at least 1 workday of notice before the date the leave is to begin".

Mr. GORTON. Mr. President, this amendment is also based on provisions in Washington State's family leave law. It clarifies and expands the notification provisions regarding foreseeable leave. I want to emphasize that phrase,

"foreseeable leave." This applies when the person seeking the leave knows that it is going to be required. Most frequently this will be the case of an expected birth or adoption; that kind of change in family relationships.

The purpose of the amendment is to provide that the leave notice shall be in writing, and shall include the dates which are sought for in the leave.

There are various exceptions. Obviously a premature birth would be such an exception.

The purpose of having the notice in writing of course is so that there will be fewer disputes. If oral notice is given there almost inevitably will be a dispute. One person says they gave the notice at such and such a time: "I asked for a certain period of time." The other will say that is not the case.

The history of the law in the United States is that written documents are to be preferred to oral notification.

This provision again has not ever resulted in litigation or protest of the proposition that it is somehow or another unfair in the State of Washington. Experience would indicate that we should write a law in such a way as to reduce the number of disputes over the meaning and use of the law rather than to encourage such disputes.

Mr. DODD. Mr. President, I yield 1 minute to the junior Senator from Washington on this amendment.

Mrs. MURRAY. Mr. President, I rise again with all due respect to my colleague from the State of Washington to oppose this amendment, and as well again having been involved in the writing of the Washington law, that he is referring to.

As written notice is required, as he has stated, there have not been any problems. However, the Federal legislation that is before us is much stronger legislation, not only for the employees but for the employer and allows them the flexibility of being silent on the law to determine how they as a company will put this into effect. I think it is much more effective for both those who use it and those who have to implement it.

I am also very concerned about the minor exceptions. I think it very much narrows the law, the exceptions that are written into the amendment. I am very concerned about the effect that it may have on a young man whose mother has Alzheimer's disease and he has no way of knowing that tomorrow a tragedy is going to strike and he needs to take time off from work in order to find her care.

I am very concerned about the effect on a person whose son or daughter is in a car accident, who has no way of knowing whether this would end up in litigation because written notice was not on file. It is a very deep concern to those of us who feel this law is imperative. I therefore oppose the amendment.

Mr. DODD. Mr. President, I yield myself 1 minute and 39 seconds.

Let me once again say, Mr. President, this is a proposal regarding notice that had hours spent putting this together. Senator BOND and Senator COATS were principally responsible for insisting upon significant notification and certification reporting on the part of the employees. That is included in the legislation.

Again, this goes back many, many months and years, in fact, in working these provisions out with many people being involved, including people in the private sector.

We have in the legislation, so my colleagues will be aware, 30 days' advance notice where there is a predictable event to occur. In the case of intermittent leave or planned medical treatment certain indication is required from appropriate medical people including up to three certifications if necessary to verify the conditions as the employee claims them. Third, the worker must make a reasonable effort to schedule the treatment.

So we have tried to build into this as many protections as possible to guarantee that the employer and the operations of the business will not be disrupted, as well as to guarantee the reasons for the leave being taken is as the employee charges.

The concern we have, as the junior Senator from Washington has pointed out, is requiring rigid requirements, place an undue burden on the employee, and circumstances that are beyond the employee's control.

Therefore, this would really create more of a problem, and probably generate more litigation, than the system we have crafted would allow.

This is again based on a lot of work, a lot of consultation, a lot of involvement, and a bipartisan effort to put these provisions together so as to make sense.

We will not know obviously, none of us can say with absolute certainty, how the law will work. But we think this is the proper way to go. If need be, we can always in the future time come back and rework this.

The PRESIDING OFFICER. The Senator from Washington has 2 minutes 9 seconds remaining.

The Chair advises the Senator from Washington that he has 1 minute remaining.

Mr. GORTON. Mr. President, I ask for the yeas and nays on the amendment.

The PRESIDING OFFICER. Is there a sufficient second?

Mr. DODD. Mr. President, I want to inquire. Have the yeas and nays have been asked for on both amendments?

Mr. GORTON. No. Amendment No. 10, the amendment about written notice.

Mr. DODD. So it is the second amendment on which the Senator has asked for the yeas and nays.

Mr. GORTON. That is correct.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. GORTON. Mr. President, again I repeat here we have a difference of an abstract debate here on the floor of the Senate and the actual practice in the real world.

The actual practice in the real world has been the kind of written notice that is asked for by this amendment, and which does in fact work, reduces disputes, reduces the litigation, and, therefore, should improve the administration of the act, rather than to hurt it. It is really not too much to ask that people give notification of requested leave when they know that the leave is going to be required.

The PRESIDING OFFICER. The time of the Senator from Washington has expired.

AMENDMENT NO. 4

Mr. DOLE. Mr. President, I rise in support of the Craig amendment of which I am also an original cosponsor and urge my colleagues to vote in its favor.

If I had one wish regarding this debate, it would be that we could erase the last 7 years of partisan bickering and gamesmanship that has governed this issue. Unfortunately, the only legacy of these debates and votes is that individuals and groups have become trapped by their own inflexible positions and rhetoric. New ideas and important arguments are only met with deaf ears.

I sincerely believe that if you line up S. 5 and S. 10, the Craig amendment, side-by-side and evaluate the pros and cons of each bill, it is no contest.

S. 10 is by far the better bill and should be supported regardless of whether you are a Democrat or Republican.

PRO-FAMILY

Both bills have been offered with the intention of being pro-family. Indeed, there is no debate over whether family leave is a good idea or of the need to provide a legislative solution to the increasing demands and stresses of parents caught between work and family.

Both bills provide up to 12 weeks of leave for the birth, adoption, or placement for foster care of a child. Both bills also provide leave in the case of a serious health condition of the employee, or the parent, spouse, or child of the employee. Both bills provide for the continuation of health insurance and for reinstatement rights upon completion of leave.

A big difference, however, is that S. 5 applies to employees of businesses with 50 or more workers whereas S. 10 reaches to businesses with fewer than 500 employees.

So if we are looking at which bill reaches more families, it is S. 10. It covers 48.7 million workers and 6 mil-

lion businesses against the 33.4 million workers and 300,000 businesses covered by S. 5.

In my State of Kansas, S. 5 excludes 95 percent of the businesses and 43 percent of the work force. What about those companies and those workers? Our proposal reaches over 99 percent of the workplaces in Kansas and 80 percent of the work force. I suspect that there are similar statistics in many other States.

In addition, S. 10 reaches more part-time workers by requiring only 19.2 work hours per week to be eligible for the benefit against the 24 hours required in the Democrat's bill.

PRO-BUSINESS

The alternative offered by the distinguished Senator from Idaho is also pro-business—something that S. 5 certainly can't claim.

The Flexible Family Leave Tax Credit Act provides an incentive for businesses to establish family and medical leave programs.

S. 5 is a mandate; a hidden tax. It is Washington, DC, reaching out into every community, every office, and every factory telling the American people what is best for them.

Indeed, legislation mandating benefits demands an offset and will force employers to cut jobs or other more desirable employee benefits.

In the first place, I wouldn't be surprised to see a lot of companies in the 50- to 60-person range cut enough jobs or reduce the hours of certain workers to fall below the mandate trigger level.

It goes without saying that this mandate legislation creates enormous pressures on and incentives for employers to do so.

In my State of Kansas, there are almost 580 companies that employ between 50 and 60 people. There are about 71 companies that employee 50 persons.

If I were a worker in one of these companies, I would be scratching my head wondering why the U.S. Congress—which should be working to create jobs, is putting expensive mandates on employers and encouraging them to cut jobs.

The Committee on Joint Taxation estimates a tax credit to pay for the Dodd mandate at $8.8 billion over 5 years.

By some estimates, that is well over 60,000 jobs. The new administration had better get cracking on their jobs creation bill because it will be needed just to mitigate the effects of this legislation.

Already, my State is reeling from the effects of recent layoff announcements. Kansas is looking to lose 1,700 jobs from Sears, as many as 6,000 jobs from Boeing, and 400 jobs from Beech.

And this legislation—which will only add to the job losses—is the first piece of legislation we send to the President. I don't get it.

PRO-JOBS

The legislation offered by the distinguished Senator from Idaho is a pro-jobs bill. Not only does it not tax employers to pay for a congressionally mandated benefit, but the credit provides an incentive to create new jobs to temporarily fill the places of those workers on leave.

DEFICIT NEUTRAL

The Flexible Family Leave Tax Credit Act is also deficit neutral. Indeed, it raises more money than it spends. It contains a pay for similar to one contained in H.R. 11 from last Congress which increases the corporate estimated tax to 97 percent beginning in 1997.

I think everyone will agree that it is not easy to pay for legislation. Indeed, rather than do so, my colleagues on the other side of the aisle prefer to impose mandates on business so that they have to pay for it.

In this Senator's opinion, that is not the direction we should be moving in.

It is the easy way out—an out-of-sight, out-of-mind approach that shirks the responsibility we have to pay for the programs we make into laws.

Unfortunately, the Democrats don't even know how much their bill costs. Sometimes, they say it will actually save businesses money; other times they say it will cost about $7.30 per employee per year. The Small Business Administration said it could cost over $7 billion. Joint tax has a different number based on a tax credit for the mandated leave.

If the Craig amendment fails, perhaps we should amend S. 5 to limit the mandate to only a cost of $7.30 per employee per year. Certainly, that is what we are hearing from my colleagues on the other side of the aisle. Of course, if we did that, then each employee would probably get about 1 hour of leave.

CUT THROUGH THE POLITICS

Mr. President, as I said at the outset, I wish we could erase the political screen on which this debate has taken place for years.

S. 10 is the best way to meet the needs of the American family without harming American businesses—and ultimately the employees of those businesses.

S. 5 is a clumsy, one-size-fits-all mandate that will force businesses to cut jobs and employee benefits to the detriment of working Americans and their families.

EXTENDING FAMILY MEDICAL LEAVE TO ALL STATES

Mr. HATFIELD. Mr. President, we live in an era where the concept of the family has rapidly changed. American families are facing a level of economic and social stress unlike any other in our history. Currently, women constitute the fastest growing portion of the American work force. Furthermore, we are seeing a dramatic increase in the number of divorce rates, children living in poverty, families without access to health care, the number of single-parent families, and the list goes on and on. The effects of that stress are becoming more evident in everything from crime rates to the number of people who are being forced to take two jobs just to meet their family's daily needs. What compounds this problem is that many U.S. families are not only dependent on a single individual's paycheck but also as the sole provider of health insurance.

It is incumbent upon the Congress to provide some type of relief to people who face the terrible choice between one's family and one's work. I would prefer providing relief to America's families through a Federal policy which gives employers maximum flexibility. I believe the least intrusive approach is to provide market incentives to employers to provide a family leave package. The Craig proposal does this and includes a revenue offset that is similar to offsets previously approved by Congress. Furthermore, the Kassebaum proposal also approaches this issue with flexibility by allowing the employee to choose whether they wish to receive a leave package if their employer offers a cafeteria plan of employee benefits. Nevertheless, the route by which we arrive at a family leave package is far less important than relieving the burden of choice between a family and a job.

Congress has often looked to states as laboratories for public policies which might be extended nationally. In my home State of Oregon, our legislature established a parental leave package in 1988. In the following 4 years, we built upon its success and made pregnancy and family medical leave available to a large segment of the State's population.

Oregon's experience with its mandated leave policies has been extremely positive. Although our leave package does not require businesses to cover their employee's health insurance premium, 88 percent of the businesses covered reported in a recent survey that they did not need to reduce employee benefits or increase their operating costs to accommodate the law. Furthermore, a great majority had absolutely no implementation problems. Many businesses in Oregon have realized a boost in employee moral and some have even gone so far as to increase their leave benefits beyond what our current law dictates.

There has been a lot of discussion as to whether a national leave standard will hurt business. From my State's experience, our leave package has created little if any burden on business, and has provided countless people with an opportunity to tend to their family needs.

Mr. President, the American family is being held hostage because we live in a society where too many people are so

dependent on their paychecks and health care benefits that their families necessarily become a secondary priority. That is why I have supported this legislation for the last four sessions of Congress and will support S. 5 today.

Finally, I would like to congratulate Senator DODD for his steadfast commitment to this issue. His dedication to bring this matter before us today will serve as a testament to his commitment to the American family.

The PRESIDING OFFICER. Under the previous order, the hour of 10 a.m. having arrived, the Senate will now vote in relation to the Craig-Dole amendment No. 4.

Mr. CRAIG. Mr. President, I ask for the yeas and nays on the amendment.

The PRESIDING OFFICER. Is there a sufficient second.

Mr. DODD addressed the Chair.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. DODD. I move to table the Craig amendment and ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The yeas and nays were ordered.

The clerk will call the roll.

The legislation clerk called the roll.

The result was announced—yeas 67, nays 33, as follows:

[Rollcall Vote No. 1 Leg.]

YEAS—67

Akaka	Durenberger	Metzenbaum
Baucus	Exon	Mikulski
Biden	Feingold	Mitchell
Bingaman	Feinstein	Moseley-Braun
Bond	Ford	Moynihan
Boren	Glenn	Murray
Boxer	Graham	Nunn
Bradley	Harkin	Packwood
Breaux	Heflin	Pell
Bryan	Hollings	Pryor
Bumpers	Inouye	Reid
Byrd	Jeffords	Riegle
Campbell	Johnston	Robb
Chafee	Kennedy	Rockefeller
Coats	Kerrey	Roth
Cohen	Kerry	Sarbanes
Conrad	Kohl	Sasser
D'Amato	Krueger	Simon
Danforth	Lautenberg	Specter
Daschle	Leahy	Wellstone
DeConcini	Levin	Wofford
Dodd	Lieberman	
Dorgan	Mathews	

NAYS—33

Bennett	Grassley	McConnell
Brown	Gregg	Murkowski
Burns	Hatch	Nickles
Cochran	Hatfield	Pressler
Coverdell	Helms	Shelby
Craig	Kassebaum	Simpson
Dole	Kempthorne	Smith
Domenici	Lott	Stevens
Faircloth	Lugar	Thurmond
Gorton	Mack	Wallop
Gramm	McCain	Warner

So the motion to table the amendment (No. 4) was agreed to.

Mr. DOLE. Mr. President, I move to reconsider the vote.

Mr. MITCHELL. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. MITCHELL. Mr. President, may we have order.

The PRESIDING OFFICER. The Senate will come to order. The Senators will please clear the aisles. The Senate majority leader has the floor.

Mr. MITCHELL. Mr. President, I want to make an announcement regarding——

Mr. BYRD. Mr. President, may we have order? This is going to be an important announcement. I hope Senators will listen.

Mr. President, I insist on order. I insist on it.

The PRESIDING OFFICER. The Senator from West Virginia is correct; the Senate is not in order.

Mr. MITCHELL. Mr. President——

Mr. BYRD. Mr. President, the Senate is still not in order. I do not want to see the majority leader waste his words on this particular announcement. It is of interest to all Senators.

The PRESIDING OFFICER. The Senate majority leader has the floor.

ALL SENATE VOTES TO CONCLUDE AFTER A MAXIMUM OF 20 MINUTES

Mr. MITCHELL. Mr. President, following consultation with the Republican leader and with a large number of Senators individually, I want to announce to Senators now that during this Congress all Senate votes will conclude after a maximum of 20 minutes. The rollcall votes are 15 minutes. Allowances will be made for up to 5 minutes thereafter to accommodate Senators. But only under the most extraordinary of circumstances will any vote be held beyond a total of 20 minutes. Extraordinary circumstances will not include that a Senator is on the way, that a Senator is at the airport, at Union Station, on the subway, coming up the steps, or in the hallway.

I have tried very hard to be accommodating to all Senators over the last 4 years. And what we found is that accommodation has encouraged tardiness. And, as a result, votes were held for as many as 30 and 40 minutes while Senators were engaged in other business. And no individual, no party, no group was abusive more than others. It is something that we all shared. The result, though, was the Senate itself and large numbers of Senators were greatly inconvenienced on many, many occasions.

So everyone has notice now, and there is no reason why a vote cannot be concluded in 20 minutes. Indeed, many argued that the limit should be 15 minutes and enforced strictly thereafter, but I have decided after consultation to permit a period, an additional 5 minutes beyond that. Senators who are not able to make it within that time will simply have to accept the consequence of having missed a vote.

I apologize in advance for any inconvenience this may cause individual Senators but I have concluded that the result will be to the benefit of the institution itself, the expeditious handling of business, and to the convenience of a much larger number of Senators.

Mr. President, I would like to yield now to the distinguished Republican leader for any comment he may like to make and then to the Senator from Rhode Island.

The PRESIDING OFFICER. The Senate Republican leader, Mr. DOLE.

Mr. DOLE. Mr. President, I do not have any quarrel with that decision. I guess it is pretty hard to define what the unusual circumstances may be but I am certain somebody will come up with one.

Mr. MITCHELL. Mr. President, I will be pleased to yield to the Senator from Rhode Island [Mr. PELL].

Mr. PELL. Mr. President, I congratulate the majority leader on that announcement. As one who has been here for 32 years and never asked for a vote to be held over, I am particularly grateful for that announcement.

Mr. MITCHELL. Mr. President, I thank my colleagues. We will begin the new policy——

Mr. COHEN. May I ask a question? Does the time limit also include the two leaders?

[Laughter.]

Mr. MITCHELL. Yes, it does.

Mr. COHEN. Thank you.

Mr. MITCHELL. I thank my colleague for that clarification.

Mr. President, the new policy will begin right now, with the vote that is about to occur.

VOTE ON AMENDMENT NO. 10

The PRESIDING OFFICER. The question now occurs on the Gorton amendment No. 10. The Chair recognizes the Senator from Connecticut.

Mr. DODD. Mr. President, I move to table the Gorton amendment and ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from Connecticut. The yeas and nays have been ordered. The clerk will call the roll.

The bill clerk called the roll.

The result was announced, yeas 60, nays 40, as follows:

[Rollcall Vote No. 2 Leg.]

YEAS—60

Akaka	Daschle	Johnston
Baucus	DeConcini	Kennedy
Biden	Dodd	Kerrey
Bingaman	Dorgan	Kerry
Bond	Exon	Kohl
Boren	Feingold	Krueger
Boxer	Feinstein	Lautenberg
Bradley	Ford	Leahy
Breaux	Glenn	Levin
Bryan	Graham	Lieberman
Bumpers	Harkin	Mathews
Byrd	Heflin	Metzenbaum
Campbell	Hollings	Mikulski
Chafee	Inouye	Mitchell
Danforth	Jeffords	Moseley-Braun

Moynihan	Reid	Sarbanes
Murray	Riegle	Sasser
Packwood	Robb	Simon
Pell	Rockefeller	Wellstone
Pryor	Roth	Wofford

NAYS—40

Bennett	Gorton	Murkowski
Brown	Gramm	Nickles
Burns	Grassley	Nunn
Coats	Gregg	Pressler
Cochran	Hatch	Shelby
Cohen	Hatfield	Simpson
Conrad	Helms	Smith
Coverdell	Kassebaum	Specter
Craig	Kempthorne	Stevens
D'Amato	Lott	Thurmond
Dole	Lugar	Wallop
Domenici	Mack	Warner
Durenberger	McCain	
Faircloth	McConnell	

So the motion to lay on the table the amendment (No. 10) was agreed to.

Mr. DODD. Mr. President, I move to reconsider the vote.

Mr. MITCHELL. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 9

The PRESIDING OFFICER. The question is on agreeing to the Gorton amendment No. 9.

Mr. DODD. Mr. President, I move to table the Gorton amendment.

The PRESIDING OFFICER. The question is on agreeing to the motion to table the Gorton amendment No. 9.

The motion was agreed to.

Mr. DODD. Mr. President, I move to reconsider the vote.

Mr. MITCHELL. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. GRASSLEY addressed the Chair.

The PRESIDING OFFICER. The Senator from Iowa.

AMENDMENT NO. 3

(Purpose: To establish arbitration procedures)

Mr. GRASSLEY. I would like to call up for consideration amendment No. 3.

The PRESIDING OFFICER. The clerk will report the amendment.

Mr. GRASSLEY. Mr. President, if the leader wants the floor, I would be glad to yield.

Mr. MITCHELL. Mr. President, I was going to seek recognition following the reporting for purpose of suggesting the absence of a quorum.

The PRESIDING OFFICER. The clerk will report the amendment. Then the majority leader.

The legislative clerk read as follows:

The Senator from Iowa, Mr. GRASSLEY, for himself, Mr. DURENBERGER, and Mr. DANFORTH, proposes an amendment numbered 3.

Mr. GRASSLEY. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

In section 107(a) of the bill, strike paragraphs (2) through (4) and insert after paragraph (1) the following:

(2) JURISDICTION.—

(A) RIGHT OF ACTION.—An action to recover the damages or equitable relief prescribed in paragraph (1) may be maintained against any employer (including a public agency) in any Federal or State court of competent jurisdiction by any one or more employees for and in behalf of—

(i) the employees; or

(ii) the employees and other employees similarly situated.

(B) RELATIONSHIP WITH ARBITRATION PROCEDURES.—No court shall have jurisdiction to render a judgment in such an action unless the court complies with the requirements of paragraphs (3) and (4) relating to arbitration and continuation of such an action after arbitration.

(3) ARBITRATION.—

(A) SENSE OF CONGRESS.—It is the sense of Congress that parties with a dispute regarding rights provided under this title should attempt to resolve the dispute without resort to litigation.

(B) ARBITRATION.—

(i) IN GENERAL.—The parties of an action brought under paragraph (2) may, if the parties agree, submit the dispute to nonbinding arbitration in accordance with this paragraph.

(ii) NOTIFICATION.—Each judge assigned to an action brought under paragraph (2) shall conduct a conference with the parties, and with counsel for the parties unless inappropriate, within 90 days after the complaint relating to the action is filed, to notify the parties of the availability of arbitration under this paragraph that may be used in lieu of litigation to resolve the complaint.

(iii) REQUEST.—Not later than 30 days after receiving the notification described in clause (ii), the parties may file a request for arbitration with the Secretary regarding the complaint. Such request shall include a copy of the complaint. The Secretary shall by regulation specify procedures for filing the request.

(iv) SELECTION OF ARBITRATOR.—

(I) LIST.—Not later than 10 days after receiving such a request regarding an eligible employee and an employer, the Secretary shall make available to the employee and employer a list of not fewer than seven arbitrators. Such list shall include, at a minimum, two names provided by the Federal Mediation and Conciliation Service. Each arbitrator on the list shall possess such qualifications as the Secretary, in consultation with the Federal Mediation and Conciliation Service and the Administrative Conference of the United States, shall by regulation specify.

(II) SELECTION.—The eligible employee and employer shall choose a mutually acceptable arbitrator (referred to in this paragraph as the "arbitrator") from the list provided by the Secretary. If the employee and employer are unable to agree on an arbitrator, the Secretary shall appoint the arbitrator.

(III) HEARING DATE.—The eligible employee and employer shall schedule a mutually acceptable date to conduct a hearing with the arbitrator under subparagraph (C), which hearing shall take place not more than 60 days after the date of choosing the arbitrator. The Secretary or the arbitrator may grant an extension of the hearing date for good cause shown.

(C) HEARING.—

(i) IN GENERAL.—The arbitrator shall conduct a hearing regarding the complaint referred to in subparagraph (B)(ii) in accordance with the procedures set forth in this subparagraph.

(ii) DISCOVERY.—The eligible employee and employer shall be entitled to make appropriate requests for discovery prior to the hearing. The Secretary, in consultation with the Federal Mediation and Conciliation Service and the Administrative Conference of the United States, shall by regulation specify the appropriate scope for the discovery requests. The ruling of the arbitrator on the discovery requests shall be final, binding, and nonreviewable.

(iii) EVIDENCE.—The arbitrator shall preside over the hearing and take into consideration written and oral evidence on the record as presented by the eligible employee and the employer. The arbitrator may utilize the Federal Rules of Evidence as a guideline for determining the admissibility of evidence during the hearing, but the Federal Rules of Evidence shall not be determinative.

(iv) DECISION.—The arbitrator shall issue a written decision to the eligible employee and the employer not later than 30 calendar days after the last day of the hearing. The decision shall be final and nonreviewable.

(D) REMEDY.—

(i) IN GENERAL.—The remedies applicable to individuals who demonstrate a violation of a provision of sections 101 through 105 shall be such remedies as would be appropriate if awarded under paragraph (1).

(ii) FEES.—The arbitrator, in the discretion of the arbitrator, may award reasonable attorney's fees and arbitrator's fees to a prevailing party in a hearing brought under subparagraph (C).

(E) ACCEPTANCE OR REJECTION OF DECISION.—Not later than 30 days after receipt of a final decision under subparagraph (C), each of the parties shall give notice with respect to each claim that is the subject of the arbitration that the party accepts, or that the party rejects, the decision of the arbitrator. If any party rejects the decision with respect to such a claim, the parties shall continue with the action described in paragraph (2) with respect to such claim. Such action shall be a trial de novo.

(4) FEES AND COSTS.—

(A) IN GENERAL.—Except as provided in subparagraph (b), the court in such an action may, in addition to any judgment awarded to the plaintiff, allow a reasonable attorney's fee, reasonable expert witness fees, and other costs of the action to be paid by the defendant.

(B) ASSESSMENT IN ACTIONS CONTINUED AFTER ARBITRATION.—In any action continued after arbitration under paragraph (3)—

(i) an eligible employee who rejects the decision of the arbitrator under such paragraph shall pay the employer's costs, as set forth in section 1920 of title 28, United States Code, and attorney's fees, as set forth in subparagraph (D), with respect to a claim, that are incurred after the rejection of the decision if—

(I) with respect to a claim seeking monetary compensation (which compensation shall be calculated as the total of damages, equitable monetary relief, and interest, and attorney's fees attributable to arbitration, that are sought with respect to the claim), the employee fails to obtain a final judgment regarding the monetary compensation that is at least 10 percent greater than the monetary compensation awarded under the decision; or

(II) with respect to a claim seeking equitable relief not described in subclause (I), the employee fails to obtain equitable relief;

(ii) an employer who rejects such a decision shall pay such costs and fees, with respect to a claim, that are incurred after the rejection of the decision if—

(I) with respect to a claim seeking monetary compensation (as described in clause

(I)(I)), the employer fails to obtain a final judgment regarding the monetary compensation that is at least 10 percent less than the monetary compensation awarded under the decision; or

(II) with respect to a claim seeking equitable relief not described in subclause (I), the employee obtains equitable relief;

(iii) if all of the parties reject the determination, no costs or attorney's fees shall be assessed against any party; and

(iv) the court may, in addition to any judgment, costs, and attorney's fees awarded in the action, allow reasonable expert witness fees to be paid by the nonprevailing party.

(C) LIMITATION IN ACTIONS CONTINUED AFTER ARBITRATION.—In any action continued after arbitration under paragraph (3)—

(i) the amount of costs and attorney's fee paid by a party under subparagraph (B) with respect to a claim shall not exceed the amount of the costs and attorney's fees of the party against whom the fees are assessed with respect to the claim; and

(ii) expert witness fees paid by the nonprevailing party shall not exceed the amount of the expert witness fees of the nonprevailing party.

(D) PROCEDURES FOR AWARDING FEES.—A party seeking an award of attorney's fees in an action described in paragraph (2) shall file an application for fees with the court before which the action is brought within 30 days after final judgment in the action involved. The application shall show that the party is eligible to receive an award under this section and the amount sought, including an itemized statement from any attorney appearing on behalf of the party that sets forth the actual time expended and the rate at which fees are computed. Within 30 days after service of the fee application upon the party against whom the fees are sought to be awarded, such party may file a response setting forth reasons why an award of fees would not be reasonable or why the amount of fees should be reduced.

(5) LIMITATIONS.—The right provided by paragraph (2) to bring an action by or on behalf of any employee shall terminate—

(A) on the filing of a complaint by the Secretary in an action under subsection (d) in which restraint is sought of any further delay in the payment of the amount described in paragraph (1)(A) to such employee by an employer responsible under paragraph (1) for the payment; or

(B) on the filing of a complaint by the Secretary in an action under subsection (b) in which a recovery is sought of the damages described in paragraph (1)(A) owing to an eligible employee by an employer liable under paragraph (1),

unless the action described in subparagraph (A) or (B) is dismissed without prejudice on motion of the Secretary.

(6) OTHER REVIEW.—No person may commence a civil action to enforce a right provided under this title except—

(A) in accordance with this section; or

(B) in an action brought under the Constitution.

In section 501(e) of the bill, strike "(3)" and insert "(4)".

Mr. MITCHELL addressed the Chair.

The PRESIDING OFFICER. The majority leader.

Mr. MITCHELL. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. MCCAIN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

ORDER OF PROCEDURE

Mr. DODD. Mr. President, I ask unanimous consent that there be 90 minutes for debate equally divided in the usual form on Senator GRASSLEY's amendment; that no other amendments or motions be in order prior to the disposition of the Grassley amendment; that at the conclusion or yielding back of their time, the Senate vote on or in relation to Senator GRASSLEY's amendment.

The PRESIDING OFFICER. Is there objection?

Mr. GRASSLEY. Reserving the right to object, can the Senator amend that for an up-or-down vote?

Mr. DODD. I ask my colleague, let us get the unanimous-consent agreement because we have to protect the majority leader's position on second-degree amendments. That is the primary purpose of this request. Otherwise, we will have to stay in a quorum call. I do not want to do that.

Mr. GRASSLEY. Let me ask the floor manager.

Mr. DODD. I say to my colleague, my intention is to table amendments. I do not want to be deprived of that. We will not be able to proceed because of the second-degree amendment problem. So why do we not leave the question open on the table and we can talk about that? Let us get this agreement.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. MCCAIN addressed the Chair.

The PRESIDING OFFICER. The Senator from Arizona is recognized.

Mr. MCCAIN. I thank the Chair.

(The remarks of Mr. MCCAIN pertaining to the introduction of S. 283 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

The PRESIDING OFFICER (Mr. WOFFORD). Under the previous order, the Senator from Iowa and the Senator from Connecticut are responsible for 45 minutes.

Mr. GRASSLEY. Mr. President, I yield myself 15 minutes.

The PRESIDING OFFICER. The Senator from Iowa is recognized for 15 minutes.

Mr. GRASSLEY. Mr. President, I say to those people who support this bill, my amendment will make their good idea work better. For people who oppose this bill, my amendment will make what is going to become law work better.

So this is an amendment that ought to appeal equally well to proponents, as well as opponents of this legislation. The Durenberger-Grassley amendment authorizes the use of arbitration to resolve disputes under the Family and Medical Leave Act.

When the Senate last considered family leave—and that was in the fall of 1991—Senator DURENBERGER offered an amendment that would have created binding arbitration under the family leave bill, as it was introduced and debated in 1991. I, at that time, did not work more closely with Senator DURENBERGER, and I regret that, because I have long been an advocate for alternative dispute resolution.

The Durenberger amendment was a very good idea, and it received 40 votes the last time it was up. It received 40 votes from both Democrats and Republicans, from both supporters and opponents of the Family Leave Act. This was a great first effort.

This year, Senator DURENBERGER and I have teamed up, and we have made some modifications in his idea. In fact, he might tell us that this amendment is not strong enough on the subject of arbitration. This is a somewhat more modest amendment. It does not revolutionize dispute resolution methods, nor does it make major changes in our civil justice system. But I believe that this amendment is critically important.

In Congress, we routinely create new rights and new remedies for our citizenry, and we expect the courts to vindicate those rights. The truth is that the rights can be protected through other means, and that truth is what lies behind this amendment—to protect rights, but to do it in ways other than just formal litigation, not mandating something other than formal litigation, but encouraging the use of alternatives to formal litigation. The effort here is about trying to keep things out of the adversarial environment of the courtroom and out of the costly environment of the courtroom. That is what our amendment is all about.

If this Congress and other Congresses in the future continue to define new rights—and let me add that that is our job; that is the job of the legislative branch. It is not the judicial branch that should be creating new rights. If we are, as a legislature, going to do this, we must devise new ways to solve disputes, which are going to grow out of our defining new rights.

Litigation is not always the most efficient way to resolve disputes. Federal courts have backlogs that range from 2 to 5 years. A parent who is wrongfully denied family leave under this new legislation will not be able to afford to wait 2 to 5 years to vindicate his or her rights under the bill. Employees need an alternative route.

In addition, we know that litigation does not always result in efficient payment of damages. University of Iowa law school Prof. Michael Saks has highlighted the inefficiencies of trials. In some forms of tort litigation, it costs $2.33 in order to compensate a victim $1. In asbestos litigation, it costs $2.59 to deliver $1 to a victim. Professor Saks concluded, "The prin-

cipal beneficiaries of the tort system are insurers followed by lawyers."

If this bill becomes law, it will be no different, and the simple truth is that an employee suing for family or medical leave should not have to enrich lawyers to get what Congress says is a right under law. We simply have to stop creating more work for the courts. The Administrative Office of the U.S. Courts recently reported that in 1992 there was a 20-percent increase in the number of civil rights lawsuits filed. That is 20 percent. Does that mean that discrimination in America increased by 20 percent in 1 year, from 1991 to 1992? Of course not. The difference is that Congress enacted a new civil rights law in 1991, and the lawyers are reaping windfalls.

For these reasons, we need a legitimate alternative, and arbitration is just that alternative. Arbitration has a rich history in resolving disputes at the workplace. Unions and management have been handling employee grievances through arbitration throughout most all of this century. In the business world, disputes over securities issues are almost always handled through arbitration. Many States with so-called lemon laws to protect consumers from defective automobiles employ arbitration. And more and more companies are turning to arbitration in disputes with suppliers, as well as customers.

According to a Business Week article from last April, Motorola reports that it has slashed litigation costs by 75 percent since it started an alternative dispute resolution program in 1984.

Alternative dispute resolution is the trend, and it is time that Congress take notice of this trend.

So I want to explain our amendment in this context of movement in support of an idea.

First, it differs from Senator DURENBERGER'S amendment in 1991 in that it is voluntary. I want to repeat clearly, this is not binding arbitration. Within 90 days of the filing of a complaint in court, the parties will have a conference with the judge. The judge will explain the arbitration alternative to the parties, and, if they voluntarily agree, the Department of Labor will administer arbitration. The parties will have the opportunity to agree on an arbitrator from a list supplied by the Secretary of Labor. If they cannot agree on an arbitrator, the Secretary so appoints one. The arbitrator will hold a hearing within 60 days and take evidence from the parties. And, although it is not necessary that the Federal rules of evidence apply, the proceedings may be less formal if the parties choose.

The arbitrator must issue a decision within 30 days, and the arbitrator is authorized to award all forms of relief as provided in the bill. There is not a single form of relief that is applicable in this bill that the courts can apply that an arbitrator also cannot use at less cost and faster and in a less adversarial environment.

The parties may accept or reject the decision. If they accept, the case will have been concluded within 6 months. If one party declines the arbitration award, then that case can proceed to court. The judge will review and hear the case de novo. But if the party who wanted the case to go to court does not do better in court than it did before the arbitrator, that party will be responsible for the attorney fees of the other party from the date the arbitration award was rejected.

There will be some risks in proceeding to court, I want to be candid, but this is precisely the message that we think this process ought to send—family leave cases should not clog the courts. And I can come to this floor on future bills when there are Federal rights of action and suggest ways that we can relieve the clogging of the courts in those areas as well, and I intend to do that whether or not this amendment is successful here because we have to do something about the overburdening and the clogging of the court dockets.

Family leave cases should not clog the courts. The employer's responsibility will be clear. Any dispute should be able to be resolved efficiently before an arbitrator but, if a party insists on court consideration, that party may have to bear an additional cost.

The provision to govern this fee-shifting is modeled on an existing Federal rule of civil procedure. Rule 68 allows a defendant to make an offer of judgment up to 10 days before a trial. If the defendant's offer to settle is rejected and the final judgment is not more favorable to the plaintiff in the settlement offered, then the plaintiff is responsible for the defendant's costs from the date of the offer.

Our amendment builds on rule 68 in a way that has been suggested by Judge William Schwarzer, the Director of the Federal Judicial Center. The Federal Judicial Center is the research arm of the Administrative Office of the U.S. Courts. He wrote an article published last fall recommending that rule 68 be expanded to include attorney's fees and that it be a two-way fee-shifting process. Under the Schwarzer proposal, either the plaintiff or the defendant could offer to settle the case. If the settlement was rejected and the party did not do better at trial, then the party would be liable for the other side's attorney fees.

Our amendment takes Judge Schwarzer's idea one step forward.

I ask unanimous consent that his article be printed in the RECORD at the conclusion of my statement.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 1.)

Mr. GRASSLEY. The limited fee-shifting provision of our amendment also contains a cap. This is necessary to be fair to both sides. The party who pursues the lawsuit after rejecting arbitration would only be responsible for the other side's attorney fees up to his or her own fees. So this is how it would work: If, for example, an employee is not satisfied with arbitration but at trial does not do better, that employee would only have to pay the company's fees in an amount up to his own fees. There would be no incentive for the employer to over-lawyer a case with the hopes of imposing costs on the employee that would be punitive and inhibit the exercise of rights.

Mr. President, arbitration is a well-accepted method in resolving disputes. The Supreme Court in the 1991 Gilmer case held that an employee's age-discrimination claim could be arbitrated where the employee signed an agreement to that effect. Arbitration in that case was mandatory and the Supreme Court upheld its use.

Here we have voluntary arbitration. It is really a very modest step and some may say too modest. But I am confident arbitration will be used regularly, even under the voluntary provisions. When the parties get into court and realize the backlogs, the delays, the inefficiency, they will choose arbitration, and they ought to have that alternative. Let us give them the option. I encourage my colleagues to support the amendment.

EXHIBIT 1

[From Judicature, October–November 1992]

FEE-SHIFTING OFFERS OF JUDGMENT—AN APPROACH TO REDUCING THE COST OF LITIGATION

(By William W. Schwarzer)

(The views expressed in this article are not necessarily those of the FJC. The author is indebted to John Shapard, who conceived the make whole principle. Edward Sussman helped prepare this article, Professor Tom Roe provided valuable assistance, and Professor Roy Simon facilitated our research.)

After fighting since 1988 over "The Uncollected Stories of John Cheever," the publishing firm Academy Chicago and the late writer's family reached a settlement this week. . . . The Cheevers have now agreed to drop a lawsuit they had filed in New York. In exchange, Academy Chicago said it would not publish any out-of-copyright material by the celebrated writer. . . .

The Cheevers, whose legal fees were estimated at more than twice the $420,000 Academy paid, could not be reached for comment. Their lawyer . . . said yesterday: "They are elated."

Elated?

"They're elated it's over," he amended.

But is "elated" really the word he wanted to use?

"I think 'relieved' is more accurate," he agreed.[1]

Is it possible to reduce the cost of litigation by creating incentives to settle quickly?

[1]Streitfeld. *Cheevers, Publisher End Fight*, Washington Post, January 25, 1992, at C5.

Virtually nobody disputes that costs have skyrocketed and are often disproportionate to the stakes. One recent study reported that it costs $2.33 to deliver $1 in compensation to tort victims.[2] The total cost of tort litigation alone in 1985 has been estimated as high as $29–36 billion, only $14–16 billion of which went to compensate victims.[3]

Some argue that the cost of litigation could be reduced by adopting the English "loser pays" rule. Advocates of the rule maintain that it would not only restrain frivolous or marginal litigation, but would also more fully compensate the prevailing party. Yet a closer look at the role reveals that, at least on this side of the Atlantic, it would be counterproductive. It would tend to deter meritorious as well as frivolous claims and defenses, failure to distinguish between the real winners and losers, and produce windfalls as well as draconian penalties.

English practice does, however, offer an alternative approach of greater promise—the "payment into court" rule under which a defendant may deposit in court a sum in satisfaction of the plaintiff's claim. If the plaintiff does not accept it, goes to trial, and recovers less than the sum offered, it is not entitled to recover costs and instead must pay the defendant's costs (which in England include reasonable attorney fees as determined by a taxing master) from the time of the payment into court.

Our own Rule 68 of the Federal Rules of Civil Procedure is a cousin of the English practice. But Rule 68 has never had a significant impact, largely because it is limited to court costs. The utility of the English practice of payment into court (coupled with growing interest in the United States in experimenting with fee shifting) suggests that revision of Rule 68 to encourage early settlement without inflicting draconian penalties of generating windfalls deserves renewed and serious consideration.

Twice before, in 1983 and 1984, the Advisory Committee on Civil Rules considered amendments of Rule 68 to include attorney fees, but both attempts met with vigorous opposition and failed. The principal objections were that fee-shifting offers of judgment could have a devastating impact on plaintiffs (including those with meritorious claims), and that they could circumvent the statutory provisions for attorney fees in civil rights cases, undermining important policies underlying the civil rights laws.

The revision proposed in this article meets these objections. It would permit plaintiffs as well as defendants to make offers of judgment. If the offeree fails after a trial to improve his or her position over what it would have been had the offer been accepted, the offeror is entitled to post-offer costs (including reasonable attorney fees). But the amount of costs that could be recovered under the rule would always be limited to the lesser of the following: the amount of the judgment, or the amount needed to make the offeror whole for having had to go to trial. Claims subject to statutory fee shifting and class and derivative actions would be exempted.

This article first analyzes the operation of the English loser-pays and payment-into-court rules as background for the proposed amendment would function and explores its impact on the dynamics of the settlement process.

THE LOSER-PAYS RULE IN ENGLAND

Under the English rule, "costs follow the event." Generally, in civil non-family litigation, the losing party pays the costs of the prevailing party as taxed, including reasonable attorney fees. This practice, however, has significant limitations and qualifications.

First, costs are not awarded where the losing party's representation is financed through legal aid. Parties whose incomes fall below blue-collar or middle-class levels are eligible for such aid, although they may be required to make some contribution as their means permit.[4] Control is exercised over the acceptance of cases to screen out complaints with no reasonable chance of success.

Second, the loser-pays rule is circumscribed by the way in which costs are awarded. On the entry of final judgment, or of an interlocutory order such as an injunction, the prevailing party applies for taxation of costs attributable to that event. Costs, therefore, are awarded not only at the end of the litigation but also at intermediate stages and may be awarded to a party that does not prevail in the end. Costs, which include both solicitors' and barristers' fees, are considered to be a reasonably incurred, with any doubts the taxing officer may have resolved in favor of the paying party. The taxing officer, who functions somewhat like a federal magistrate judge, determines fees with reference to a fee schedule, taking into account the time spent, a reasonable hourly rate (which is less than that actually charged by attorneys), and a multiplier based on the amount at stake, the complexity of the matter, and the degree of skill required. Awards tend to run at 60–70 percent of actual fees.[5]

Costs are taxed against parties, not the attorneys, except in a case of misconduct, which does not include maintaining an unsuccessful action. Taxing masters have wide discretion, but the losing party's financial situation is generally not regarded as relevant. Losing a lawsuit can therefore have severe financial consequences. Even if a party is unable to pay a cost order, the order remains on the books as a continuing liability.

LOSER-PAYS IN THE U.S.

How would the English rule work in the United States? In the absence of comparable legal aid, access to the courts by economically disadvantaged people would be burdened. Although contingent fee arrangements would still be available, unsuccessful plaintiffs would be exposed to the risk of losing their assets to pay the defendant's fees. (The English rule does not tax costs against attorneys and presumably, any American version would not do so either.) But the rules potentially harsh impact would not be limited to those on the lowest rungs of the economic ladder. Even individuals with annual incomes in the $50,000 to $75,000 range would face difficult decisions whether to hazard having to pay an opponent's fees that might equal or exceed their annual income. This risk falls equally on plaintiffs and defendants. An individual or small business confronted with an uninsured claim, for example, might settle rather than assert a reasonable defense and risk having to pay the plaintiffs fees if the defense is unsuccessful. The rule would deter some litigation, but it would do so more on the basis of the litigant's risk averseness than the merits of the litigant's case.

Why, then, does the loser-pays rule survive in England? Apart from tradition and legal aid, one explanation lies in the profound differences between the British and American civil justice systems. England virtually abolished juries in civil cases (except for libel and malicious prosecution) more than 50 years ago.[6] Cases are tried before judges whose decisions are narrowly bound by precedent, not only on liability but on damages as well. Outcomes, therefore, tend to be more predictable in England than in the United States.

As a result, litigation decisions in the two systems are fundamentally different. A case that might to some appeal frivolous or marginal upon filing in an American court may still lead to a plaintiff's verdict; similarly, an apparently weak defense may prevail before a jury. As long as civil cases are tried before juries, fee shifting must be approached with caution, lest it result in imposition of possibly devastating penalties against actions or defenses that could have been winners.

Moreover, lack of predictability in American law is not limited to juries. Substantive and procedural law has undergone constant and sometimes dramatic change during the past 40 years. Law in America is more volatile and less precedent-bound than in England. Propositions that might at one time have been thought frivolous, or at least highly speculative, have become accepted. It is a rare case of which one can say with assurance that it cannot prevail.

If, then, there are circumstances that tend to lead to what many regard as an excess of litigation, they probably reflect the nature of our system more than the litigiousness of the population. It does not seem wise to try to cure problems inherent in our legal system by exposing parties who use it to severe and uncontrollable hazards.

At least two additional reasons exist for rejecting the conventional loser-pays rules: it mistakenly equates "loser" with "party against whom judgment is entered," and it fails to account equitably for the costs that the "winner" may impose on the "loser."

To illustrate this point, suppose the plaintiff in a personal injury action recovers a judgment of $30,000, after incurring attorney fees of $10,000. Under the loser-pays rule, the defendant would have to pay the plaintiff $40,000. But suppose further that the defendant had offered to settle the case for $35,000, and thereafter had to pay substantial attorney fees to defend the case at trial. Had the plaintiff accepted the defendant's offer, the matter would have cost the defendant only $35,000. But by virtue of the loser-pays rule, the defendant—who was the real "winner" in the sense that the judgment was less than what he or she had offered to pay—incurred a loss of more than $40,000 ($30,000 to pay the verdict and $10,000 for the plaintiff's reasonable attorney fees, plus the defendant's own fees).

Or suppose the plaintiff had recovered a judgment of only $500 after rejecting the de-

[2]Hensler *et al.*, Trends in Tort Litigation: The Story behind the Statistics 27 (1987), as cited in Saks, *Do we really Know Anything About the Behavior of the Tort Litigation System—and Why Not, 140* U. PENN. L. Rev. 1147, 1282 (1992) (statistic based on non-auto torts

[3]Drawing on data from Kakalik & Pace, COSTS AND COMPENSATION PAID IN TORT LITIGATION vi, 67–68, 75 (1986) and Sturgis, "The Cost of the U.S. Tort System: An Address to the American Insurance Association" (1985), cited in Saks, *supra* n. 2, at 1281–1283.

[4]Published reports indicate that the proportion of people eligible for aid has decreased in recent years from about 70 percent to about 40 percent. *See A Survey of the Legal Profession*. The Economist, July 18–24, 1992, at 15–17.

[5]*Id.*

[6]Administration of Justice (Miscellaneous Pro visions) Act, 1933 (restricting the right to trial by jury in civil cases to defamation and other limited exceptions).

fendant's $35,000 offer. It makes no economic sense to regard the plaintiff as the winner in this situation and require the defendant to pay the fees, which would probably vastly exceed the amount of the judgment.

These cases illustrate the need for a fee-shifting process to determine the true winner and consider the true costs imposed on the winner by the loser's actions, without generating windfalls or inflicting draconian consequences. An offer-of-judgment rule, appropriately designed, can accomplish these purposes.

THE PAYMENT-INTO-COURT RULE IN ENGLAND

The English payment-into-court rule permits a defendant (or cross- or counter-defendant) to deposit in court a sum it believes is sufficient to meet the claim. If the claimant does not accept the deposit, continues through trial to judgment, and recovers less than the amount deposited, it is the losing party. It will not be entitled to costs and will have costs taxed against it from the time for acceptance of the deposit. If, on the other hand, the claimant recovers a judgment for a greater amount, it will be the prevailing party and as such recover costs under the loser-pays rule. The procedure does not preclude a party from recovering costs in connection with an interlocutory proceeding. The deposit may be made at any time, even during the course of trial, though the later it is made, the less its potential benefit. A deposit that has not been accepted within 21 days lapses, but it may be renewed in the same or a different amount.

The procedure creates a strong incentive to early settlement. It provides defendants with the opportunity to reduce the risk of having to pay the plaintiff's costs as well as their own. And it gives plaintiffs the option to accept an offer, eliminating the risk of losing the lawsuit and having to pay both sides' costs. It is a more flexible procedure than the loser-pays rule, because both sides have some control over their fate, beyond the decision whether to file and whether to defend. Decisions about making and accepting offers occur in the course of the litigation when both sides have acquired information enabling them to evaluate their prospects and risks. Moreover, the practice enables parties to avoid proceedings for the taxation of post-offer costs.

AN OFFER-OF-JUDGMENT RULE FOR THE FEDERAL COURTS

Rule 68 of the Federal Rules of Civil Procedure resembles the English practice, except that by its terms it is limited to court costs, generally only a fraction of attorney fees. As now written, it permits defendant at any time more than 10 days before trial to serve an offer of judgment for money or other relief and costs then accrued. If the plaintiff accepts the offer within 10 days, judgment is entered. If the plaintiff does not accept and the final judgment "is not more favorable [to the plaintiff] than the offer," it must pay the costs incurred after the making of the offer. If an offer is not accepted, a subsequent offer may be made.

Because Rule 68 ordinarily applies only to court costs,[7] it is rarely used. Moreover, it is limited to offers by defendants; plaintiffs do not have the option to make cost-shifting offers. And it invites uncertainty and disputes in the determination of whether a non-monetary judgment is "more favorable than the offer."

Rule 68 could be made into an effective and fair vehicle to encourage early settlements without generating objectionable consequences by adoption of the revision here proposed. The full text of the proposed revision appears on page 151. It has the following elements:

Recoverable costs include reasonable attorney fees as well as court costs incurred following expiration of the time for acceptance of the offer;

Offers of judgment may be made by plaintiffs as well as defendants;

Recoverable costs are limited to the amount of the judgment;

Recoverable costs are limited to what is needed to make the offeror whole. That is, they would be reduced by the amount by which the offeror benefits from paying or receiving the judgment compared with what it would have paid or received under its offer;

The period for acceptance of the offer is extended to 21 days, or such additional time as the court may allow, to allow reasonable time for evaluation;

The court has discretion to reduce costs where necessary to avoid infliction of undue hardship on a party;

Claims arising under fee-shifting statutes and class and derivative actions are excluded.

HOW IT WOULD WORK

The following discussion describes the operation of the revised rule in various typical circumstances. Suppose a defendant offers to settle for $25,000, by the plaintiff rejects the offer and obtains judgment for $20,000. The defendant's reasonable post-offer costs are $10,000. The defendant would be entitled to recover its post-offer costs because the plaintiff's judgment was not more favorable to the plaintiff than the defendant's offer. Had the plaintiff accepted the settlement offer, not only would its recovery have been greater, but both the defendant's and plaintiff's post-offer costs would have been avoided. The proposed rule would reward the defendant for having made a settlement offer the plaintiff could have accepted to its benefit.

Note, however, that the defendant is $5,000 better off under the $20,000 judgment than had the $25,000 offer been accepted. Here the make-whole restriction comes into play. Under the proposed revision, the offeree pays costs "only to the extent necessary to make the offeror whole" and "in no case shall an award . . . exceed the amount of the judgment obtained."

To make the offeror whole, the amount by which the offeror is better off after trial than had the offer been accepted—$5,000—is deducted from the defendant's costs of $10,000. The defendant is therefore entitled to recover only $5,000 of its $10,000 in post-offer costs, and this amount is set off against the plaintiff's $20,000 judgment, making the defendant's net liability to the plaintiff $15,000.

Suppose the defendant's post-offer costs had been $30,000. Under the second limitation mentioned above—the amount of the judgment—the defendant could not recover more than $20,000, the amount of the plaintiff's judgment. This restriction serves to protect plaintiffs against out-of-pocket liability to defendants and to deter offering parties from incurring excessive litigation costs. Both sides' incentives to make offers that are likely to lead to settlement remain substantial, however; plaintiffs because they may lose the benefit of their judgments and defendants because they risk doubling their exposure in case of an adverse judgment.

Now suppose the plaintiff, rather than the defendant, had made a $25,000 offer. Since the judgment of $20,000 was not more favorable to the plaintiff than the offer made, the plaintiff would not be entitled to post-offer costs. The revised rule provides equal incentives for plaintiffs and defendants to make reasonable offers—that is, offers that appear to have a reasonable chance of being more favorable to the offeree than the judgment it is likely to obtain and thereby shifting post-offer costs. As each side moves toward such offers, the negotiating gap between the parties should narrow.

Suppose the plaintiff had offered to settle for $15,000 instead of $25,000. Since the judgment was for $20,000, the plaintiff's offer "beat" the judgment by $5,000 (in other words, the judgment was "more favorable to the offeree") and the plaintiff is entitled to post-offer costs. But the plaintiff's costs will be reduced, just as in the defendant's case, by the amount gained from the rejection of the offer, $5,000. If the plaintiff's reasonable post-offer costs were $10,000, this amount would be reduced by $5,000 and the balance added to the judgment, making it $25,000. the plaintiff's recoverable costs could in no event, however, exceed $20,000, the amount of the judgment.

Confronted with the risk of having to pay all or part of their opponents fees, litigants are likely to consider offers more seriously. And each is likely to want to hedge its bets by making counter-offers. Thus, the negotiating process will tend to be energized by the rule's incentives. These incentives, moreover, encourage early offers, because the more fees that remain to be incurred, the greater the potential gains and risks. To enable parties to evaluate offers, the time for acceptance is extended to 21 days, with the court having discretion to extend it further. No restriction is imposed on how early an offer can be made. This will create a strong incentive, in cases where the outcome appears relatively certain from the outset, to make early offers to avoid most litigation costs.

The revised rule's incentive structure is based on the imposition of risks on the parties, but the make-whole and capping restrictions limit these risks. No costs are recoverable when judgment is for the defendant. And neither side can expect to recover disproportionate attorney fees and costs.[8]

MULTIPLE OFFERS

The revised rule is designed to accommodate multiple offers. Suppose a defendant rejects the plaintiff's offer to settle for $25,000. Following discovery, the defendant offers $30,000. Meanwhile the plaintiff has incurred $10,000 in costs since making the offer. The case goes to trial, and judgment is for the plaintiff for $27,500. The defendant may have calculated that my making a last-minute-offer the plaintiff could probably not beat at trial, it could deprive the plaintiff of the cost-shifting benefits of the earlier offer. To promote the ongoing exchange of realistic offers throughout the pretrial period, while preventing game playing that might defeat this purpose, the revised rule provides that a party making an offer "shall not be deprived of the benefits thereof by a subsequent offer unless and until the offeror fails to accept [a move] favorable offer." In other words, if a later offer from the opponent is not more favorable to the offeror than the judgment,

[7] See text at note II, *infra*.

[8] In some cases in which the plaintiff has a contingent fee contract with its attorney, the rule could operate to reduce the amount available to pay attorney's fees if the plaintiff recovers judgment but fails to improve on the defendant's offer, and the defendant's post-offer fees absorb much of that judgment. But this disadvantage should be offset by the tendency of the rule to encourage earlier and more attractive settlement offers by defendants.

taking into account costs incurred in the interim, the earlier offer prevails. But if the opponent's later offer is more favorable to the offeror than the judgment, that offer prevails.

Under the facts stated above, suppose the plaintiff incurred costs of $10,000 after its offer until the time of the defendant's offer. This amount would be deducted from the defendant's offer of $30,000 for purposes of determining whether that offer was more favorable to the plaintiff than the $27,500 judgment. So adjusted, the defendant's offer becomes a $20,000 offer and is not more favorable to the plaintiff than $27,500 judgment. The defendant has not succeeded in "cutting off" the plaintiff's earlier offer, and the plaintiff recovers its reasonable post-offer costs minus the make-whole reduction of $2,500.

The revised rule's incentive structure remains dynamic throughout the litigation. An offeror is likely to be faced with a counter-offer that will require evaluation. The risks and opportunities created by the rule, amplified by the passage of time and the accumulation of costs, should exert constant pressure on parties to move toward agreement.

OTHER VARIABLES

Improving one's offer. Suppose that sometime after having its offer of $25,000 rejected, the plaintiff offers to settle for only $15,000. Meanwhile it has incurred additional costs of $5,000. The defendant again rejects the offer, causing the plaintiff to incur an additional $10,000 in costs. The judgment is for $30,000. Both the first and second offer are more favorable to the offeree than the judgment, but each has different consequences. Recall that under the revision, an offeror is entitled to the benefit of its offer unless and until it declines to accept a subsequent more favorable offer. Since no subsequent offer was made to the plaintiff, it is still entitled to the benefits of the first offer if they are greater than those of the second. In other words, in the absence of a counter-offer, the plaintiff can choose the offer that will lead to the greater recovery. In this case, the plaintiff can recover $10,000 in costs under the first offer but nothing under the second because of the impact of the make-whole restriction.[9]

Non-monetary offers. When the offer and judgment include non-monetary relief, the proposed revision calls for a straightforward comparison: "if the judgment obtained includes non-monetary relief, a determination that it is more favorable to the offeree than was the offer shall not be made except when the terms of the offer included *all* such non-monetary relief" (emphasis added). Suppose the defendant offered $25,000 and no additional non-monetary terms. If the judgment is for $20,000 but also includes injunctive relief, the defendant would not be entitled to costs despite its more favorable monetary offer.

Suppose the defendant offered $25,000 and an agreement not to publish material for five years, but the judgment was for $20,000 and an order imposing a trust with all publication profits for three years going to the plaintiff. Because the offer did not include all the non-monetary relief awarded in the judgment, though its monetary terms were more favorable, the defendant is still not entitled to costs. This would be true even if a comparative appraisal were to establish that the terms of the offer had been more favorable than the judgment obtained. The terms must be the same (or subsumed therein) for the offer to be considered more favorable than the judgment obtained. This restriction is necessary to avoid collateral litigation over the evaluation of non-monetary relief.

If, in the above case, the judgment had been for $20,000 and an order not to publish the material for three years, the terms of the offer would have included all the non-monetary relief awarded by the judgment, and the defendant would have been entitled to recover costs. The three-year ban can be said to have been completely subsumed under the offer of a five-year ban (even if the words differed). Note, however, that since the award of fees cannot exceed the amount of money awarded in a judgment, an award of only non-monetary relief precludes fee shifting under the revised rule.

IMPACT OF THE PROPOSED REVISION

As the foregoing discussion has shown, the proposed revision has none of the objectionable features of the 1983 and 1984 proposals:

It does not threaten plaintiffs with out-of-pocket loss;

It does not undercut the policy of fee-shifting statutes;

It does not permit windfall recoveries;

It does not permit recovery of disproportionate costs;

It eliminates the need for judicial review of the reasonableness of offers and rejections.

Scope of the rule. The revised rule has three exclusions. First, claims arising under fee-shifting statutes, such as the civil rights and antitrust laws, are excluded to avoid undercutting the congressional policy encouraging private enforcement.[10] The effect of this exclusion would be to supersede the Supreme Court's 1985 decision in *Marek* v. *Chesny*.[11] Chesney held that Rule 68 could bar an award of statutory attorney fees to a prevailing civil rights plaintiff who had rejected a settlement offer that exceeded the judgment. The decision did not shift the defendant's fees; the plaintiff remained the prevailing party for purposes of the civil rights statute.

The revised rule also excludes class and derivative actions because Rules 23, 23.1, and 23.2 require settlements of such actions to be approved by the court. To permit unapproved offers of settlement to be operative to shift fees would be prejudicial to the parties and create an irreconcilable conflict with these rules.

The revised rule does not exclude actions in which the parties by prior agreement have provided for recovery of attorney fees by the prevailing party. In such cases, in which a final judgment may include attorney fees, the rule will treat offers as including the component of monetary relief as well as others. Similarly, punitive damage would be treated as an element of monetary relief encompassed in an offer. Doing so is consistent with the normal practice of settling such cases.

Judicial impact. Because of the limits the revised rule imposes on cost recoveries, there is no need for judicial review of rejected offers. But because the revised rule also limits recovery to reasonable attorney fees, the court is the ultimate arbiter of the award. If the rule operates as contemplated, however, the court should rarely have to be called on, because the vast majority of cases will settle, and because it is reasonable to expect that more often than not, the rule's make-whole and capping limits will make it self-evident that reasonable attorney fees exceed the amount allowable, obviating the need for court proceedings. If the revised rule accomplishes its purpose on generating not only more but earlier settlements, and with less need for judicial intervention than currently, the resulting savings in judicial time should more than offset the amount of time required by the occasional attorney fees proceedings under the rule.

IMPACT ON SETTLEMENTS

The assumption underlying the proposed revision is that it will encourage parties to make earlier and more reasonable offers, leading to earlier settlement negotiations with greater prospects of success.

The legal literature abounds with economic analysis of fee-shifting mechanisms. Not surprisingly, given the complexity of the subject, opinions differ on whether such mechanisms encourage early settlement. One writer recently concluded that "[u]ntil a better empirical foundation has been established, the existing theoretical arsenal is still too weak to resolve many of the ultimate questions of interest."[12] "Institutional details" motivating and constraining the behavior of parties and lawyers, the writer noted, are not necessarily accounted for by the current economic analysis of fee shifting.

Indeed, a host of not readily quantifiable factors can influence the incentive structure in any particular case. Deep-pocket litigants determined to eliminate their adversaries or those driven by principle or policy might be impervious to economic incentives. Highly risk-averse litigants, on the other hand, would be extremely sensitive to the threat of added costs and opt for settlement.

Some commentators have argued with respect to a loser-pays rule that it might actually discourage settlement rates by driving apart litigants who both firmly believe they will win. According to this argument, in such a case only the prospect of the parties bearing their own attorney fees creates a range of possible settlements. If, instead, each party believed that the other side would ultimately bear all the costs of the litigation, the incentive to settle to avoid expenses would disappear. For example, under the American rule, if the plaintiff firmly believed he or she would recover $10,000, and the defendant firmly believed there would be no recovery, but each anticipated having to spend $6,000 to take the case through trial, the parties might enter settlement discussions anyway, because even a $5,000 settlement would leave each party in better finan-

[9]The plaintiff incurred costs of $15,000 following the first offer. But $5,000—the amount by which the judgment exceeded the offer—must be deducted from this amount. Thus, under the first offer, the plaintiff can recover $10,000 in costs in addition to the judgment. Following the second offer, the plaintiff incurred only $10,000 in costs. Since it received a $15,000 benefit, the amount by which the $30,000 judgment exceeded the offer, the plaintiff would not be entitled to recover costs under the second offer.

[10]Pendent state law claims would be included.

[11]473 U.S. 1 (1985).

[12]Donohue, *The Effects of Fee Shifting on the Settlement Rate: Theoretical Observations on Costs, Conflicts, and Contingency Fees*, 54 Law & Contemp. Prob. 195 (1991). There have also been several analyses focusing on the question of including legal fees under Rule 68. See Rowe, *American Law Institute Study on 'Paths to a Better Way': Litigation, Alternatives and Accommodation—Background Paper*, 1989 Duke L.J. 824: Rowe and Vidmar, *Empirical Research on Offers of Settlement; A Preliminary Report*, 51 Law & Contemp. Prob. 13 (1988); Miller, *An Economic Analysis of Rule 68*, 15 J. of legal Stud. 93 (1986); Toran, *Settlement, Sanctions and Attorney Fees: Comparing English Payment into Court and Proposed Rule 68*, Am. U. L. Rev. 301 (1986); Woods, *For Every Weapon a Counterweapon: The Revival of Rule 68*, 14 Ford. Urb. Law J. 283 (1986); Simon, *The Riddle of Rule 68*, 54 Geo. Wash. L. Rev. 1 (1985).

cial shape than a trial. Yet under the loser-pays rule, the argument goes, the litigants might dig in since each anticipates no net loss following a verdict.

Even if this argument has some validity under a loser-pays rule, it carries little weight under the proposed offer-of-judgment rule. For the defendant, there is no advantage in digging in without ever making an offer, as there might be under a loser-pays scheme, for by digging in it gives up any chance of recovering costs, regardless of any recovery by the plaintiff. For the plaintiff, in turn, there is no advantage in refusing to make an offer that might beat the judgment. And once such an offer is on the table, the defendant's risk of loss escalates unless it accepts the offer or makes a counter-offer attractive to the plaintiff. Unlike the loser-pays scenario under which the parties may be stalemated, the revised rule provides incentives that should energize the negotiating process.

The incentive structure under the revised rule will not be equally powerful in all cases. In large and especially multiparty litigation—in which the stakes are high relative to costs and control may be dispersed—fee-shifting offers of judgment may have little utility. But as the cost of litigating a dispute rises in relation to its value, the power of the revised rule increases. Because the incentive will be to confront the opponent with an offer it would not lightly refuse, offers and counter-offers should move toward the middle ground.

It is true that the larger the gap between an offer and a judgment, the larger will be the offeror's make-whole offset against the costs he or she can recover to reflect the resulting benefit. Thus, if a defendant offering to settle for $35,000 succeeds in holding the plaintiff to a $5,000 judgment, the defendant will recover less in costs than if the plaintiff won a judgment of $30,000. Similarly, the larger the excess of a judgment over a plaintiff's offer, the greater the offset against a plaintiff's cost recovery. This result is a necessary corollary of the make-whole principle underlying the rule. But it does not significantly weaken the revised rule's incentives and is justifiable on the basis of the benefit derived by the offeror from the more favorable result obtained.

The principal impact of the revised rule will likely be on cases in which the cost of litigation could become disproportionate to the amount at stake. It would also have a significant impact in cases where liability is all but certain. Suppose a creditor is owed $50,000. He or she estimates that to take the case through trial will cost approximately $50,000. The defendant may currently be able to escape having to pay the debt by simply stonewalling, figuring that the creditor may not wish to throw good money after bad. The revised rule would enable the creditor to file suit and make an offer of judgment for $49,999. If the debtor refuses the offer, it risks having to pay the debt as well as the creditor's and its own costs. The creditor can go to trial and incur costs up to $50,000 without jeopardizing any of the $50,000 recovery. The debtor, facing up to $100,000 in potential losses, plus its own attorney fees, has a strong incentive to settle. Similarly, a defendant with a strong defense against a doubtful claim can make a modest offer, with a high expectation of setting off its costs against a judgment if the offer is rejected.

No doubt, even under the proposed revised Rule 68, some litigation will continue to be protracted and costly. Some cases will not, and should not, settle for any number of reasons. But the revised rule may often give parties the push that is needed to initiate settlement negotiations on a basis that is likely to lead to agreement.

Mr. GRASSLEY. Mr. President, I would like, if it is possible, to yield 10 minutes, or what portion he might use, to the Senator from Minnesota.

The PRESIDING OFFICER. The Senator from Minnesota.

Mr. DURENBERGER. Mr. President, I rise now in support of the Family and Medical Leave Act and in support of the amendment by my colleague, Senator GRASSLEY, and we are offering to provide for voluntary arbitration of disputes.

Last year, I supported the Family and Medical Leave Act. At that time I complimented my colleagues, Senators DODD, COATS, BOND, FORD, and others, for their work to make this bill employee and employer friendly, and I renew that commendation today, particularly for the man who spent so much time bringing us to this point, our colleague from Connecticut, Senator DODD .

Just a few months ago, I voted to override President Bush's veto of family and medical leave, because I think it is an idea whose time has come.

A good society is not measured by how many people are on welfare, but how many are at work. So our national income security policy begins with earnings; plus the programs like medical leave, health insurance, pensions, and vacation that supplement earnings; and catastrophic insurance, social insurance, and tax policy.

My home State of Minnesota is out front on many issues, and this is one of them. Minnesota employers already provide 6 weeks of parental leave and allow workers to use their sick leave to care for sick family members. In most cases, this is paid sick leave. Last year, I introduced a bill based on this Minnesota model.

In Minnesota, we do it because it is the right thing to do. For workers, for families, for our own sense of community. But for many employers the costs of leave disadvantage their products and services in national and international competition. It is for this reason we need a national policy to guide all employers.

From the time in 1935 that Wisconsin passed an unemployment compensation tax on to its employers, we have found that good policies start locally, but eventually become national policy—to prevent these right things to do from being defeated by market competition.

The Family and Medical Leave Act is a national policy that instills an ethic of caring in the workplace.

We want workers to be able to care for a newborn or newly adopted child, or care for a sick family member. We want employers to care enough to continue health insurance coverage when families need it most, and care about workers having jobs when their family obligations are over.

This debate should not be a choice between what is good for employers and what is good for employees. I believe that a national family and medical leave policy will be good for both.

Family and medical leave will be good for workers and their families who need support to face crisis situations. It will be good for employers, since it costs less to provide unpaid leave than it does to fire and replace employees.

A national leave policy will be good for our country, because we care about providing income security for all Americans, and the best income security is job security.

Our industrial competitors around the world already have generous family and medical leave policies. America can have a workplace that cares and competes.

I am aware that this bill has already been through a series of compromises. S. 5 is perceived as the unfinished business of the last Congress, and I understand the sense of urgency that many of my colleagues feel to enact this bill as quickly as possible. But I am asking my colleagues to consider one more change: one more promotion of the ethic of caring.

Under the current framework of this bill, employer and employee disputes will be resolved in court. As I have said, a family and medical leave policy will be good for both parties. But a protracted court battle to settle disputes will be good for neither.

In 1991, I proposed an amendment to the Family and Medical Leave Act that would have provided a mechanism for settling disputes through binding arbitration with limited judicial review. This process would be less costly and time-consuming for both employers and employees. That amendment as my colleague has already pointed out, got 40 votes in this body.

Today, Senator GRASSLEY and I are offering an amendment that will provide for voluntary arbitration. This amendment will address the concerns of my colleagues who were reluctant to support my 1991 binding arbitration amendment because of issues of equal bargaining power and judicial review.

Under the Grassley-Durenberger amendment, after a complaint is filed in court, the judge is required to meet with the parties and inform them of the availability of arbitration to settle the dispute. Arbitration will mean a less costly, less time-consuming, and less adversarial process.

Court battles can mean delays of 2 to 5 years before disputes are resolved. In the end, workers who prevail in court usually end up with only 43 percent of their award—the rest is eaten by court costs, attorney fees, and other administrative costs. Employees who have

been aggrieved under the Family and Medical Leave Act are probably least able to afford the time and money it takes to resolve these disputes in court.

Under the Grassley-Durenberger amendment, employees and employers can resolve their disputes through arbitration, but only if both parties agree to enter into arbitration. The Department of Labor will provide a list from which the employer and employee will choose the arbitrator. The arbitrator will have full authority to award any of the remedies available under the Family and Medical Leave Act.

If both parties are satisfied with the outcome, the process can be completed in under 6 months. If one party is not satisfied, that party can proceed to de novo review in court. That means that the arbitrator's findings of fact and conclusions of law will be fully reviewable in court.

If the arbitrator's decision is reasonable, however, there will be a strong incentive to abide by that decision. If the party who chose to proceed does not fare better in court, he or she will be responsible for the other side's attorney fees, limited to the total of their own attorney costs.

Mr. President, this amendment promotes an ethnic of caring by providing a way to resolve disputes without having to resort to confrontational, costly, time-consuming litigation. It will allow employers and employees to voluntarily sit down at a table and work through their dispute, without sacrificing any right to judicial review.

This amendment is good for employees and good for employers because it will reduce the time and cost of resolving conflicts on an issue critical to both. It is also good for our overburdened courts that are already clogged with cases. This amendment is a win-win proposition.

As you will hear from the sponsor of the bill, it has only one problem—my colleage from Connecticut, Senator DODD, will say that family and medical leave cannot pass the House of Representatives with an arbitration amendment.

I say we now have undivided Government in D.C. We have not had it for 12 years. This bill is here because President Clinton wants it here—and wants it to move rapidly. Its his opportunity—and the House of Representatives opportunity—to give us family and medical leave. Let us give them a chance to pass an even better bill.

I hope that my colleagues will support family and medical leave because it makes sense and its the right thing to do. I also hope my colleagues will support this amendment because it makes sense and its the right thing to do.

Mr. DODD. Mr. President, I yield 5 minutes to the distinguished junior Senator from Texas.

The PRESIDING OFFICER. The Senator from Texas is recognized.

Mr. KRUEGER. Mr. President, I thank the chairman for yielding this time.

Mr. President, I rise to express my strong support for Senator DODD's Family and Medical Leave Act of 1993. I am convinced that this measure will reduce the workplace pressures that already damage our families. If this legislation does not embody family values, I do not know what does.

The pressures on working families are real. Both parents have to work in almost 60 percent of U.S. households with children today. That percentage compares with just 19 percent 30 years ago. Presently, two-thirds of single and married mothers, with children under age 18, work outside the home.

Mr. President, these numbers prove the days of Ozzie and Harriet are long gone. More often than not, dad no longer trots off cheerfully to work, while mom contentedly stays home to care for the little ones.

Now, both mom and dad trudge off to work, scrambling for day care and scared stiff about what they will do if one of the kids becomes seriously ill. If one of the kids does, and the parents' employers do not provide leave, the parents face a Hobson's choice: either turn their back on their family or on the job on which their family depends.

The risk of that Hobson's choice is real. The U.S. Chamber of Commerce found that 82 percent of employers do not provide leave to care for sick children. The Bureau of Labor Statistics found that only 37 percent of workers are granted maternity leave in firms with more than 100 workers. The U.S. Chamber discovered that 75 percent of employers fail to offer paternity leave.

The Family and Medical Leave Act will reduce the risk of working families facing the Hobson's choice. This legislation entitles eligible working parents to 12 weeks of unpaid leave a year. We need to keep in mind, that's unpaid leave.

They can use that unpaid leave to have or adopt a child, care for a sick child, or recover from their own illness. Finally, they can take leave to care for an ill grandparent for whom they have responsibility.

These working parents get to keep their health insurance while they are gone and get their jobs back when they return.

That is all they are entitled to under this bill. That is all covered businesses have to provide.

I do not believe the business community will suffer from enactment of this legislation. First of all, the legislation exempts 95 percent of all employers nationwide: it exempts all businesses with less than 50 employees. This measure therefore sidesteps the small companies, the partnerships, and the mom and pop operations. But even for covered businesses, the General Accounting Office estimates this legislation will cost them only $5 per year, per employee.

Mr. President, this minimal cost is one of the reasons that this bill has strong bipartisan support. Some of the Republicans supporting this bill, as I understand it, are Senators KIT BOND and DAN COATS, who could never be accused of being enemies of small business.

These Senators were instrumental in helping to craft this legislation to make sure it is business-friendly.

I think it is business friendly. I think it is friendly not only to businesses but to the well-being of all people in our country.

These business friendly provisions are apparently satisfactory to the National Retail Federation. They have come out in support of this legislation. The federation represents over 1 million retail establishments nationwide. We have 100,000 retailers in my State of Texas who are members of the federation.

I think that family and medical leave is long overdue. It is overdue because our society has been changing, because the economy is such, and our society is such, that in the majority of American families today, both parents work. If both parents work, both parents should at least have the opportunity to return to their own families when there is a need there.

We now have a President who will sign this measure into law after having one who previously vetoed it. Now we have a change to protect working families from their Hobson's choice. When their loved ones become ill they can protect both their jobs and their families.

Mr. President, when it comes to family values, the Family and Medical Leave Act is where the rubber meets the road. We need to get moving down that road and pass this legislation as soon as possible.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. DODD. Mr. President, I yield myself 10 minutes on the Grassley amendment.

Before I take time to discuss the Grassley amendment, let me first of all commend my colleague from Texas. I have not had the opportunity in a formal setting to congratulate him on his arrival in the Senate.

I had the pleasure of serving with Senator KRUEGER in the House of Representatives. In fact we were elected the same year to the House, 1974, and spent several terms together in the Congress. I am pleased to welcome him here in the Senate.

While obviously there are, from time to time, issues that will create some conflicts between the northeast and Texas, I can say categorically that the energy-producing States of this coun-

try, in my experience serving in the House, never had a better advocate, a more articulate advocate, than BOB KRUEGER. Certainly, coming into these difficult days, when talking about important issues such as energy in his involvement on the Commerce Committee, Texas is going to be well represented in the U.S. Senate with the arrival of BOB KRUEGER. Obviously, his interests go beyond just the issues of energy.

But nonetheless, I am pleased that he is here. I think he will make a tremendous addition to the U.S. Senate and I commend him on his comments.

Mr. KRUEGER. I thank my colleague very much.

Mr. DODD. Mr. President, if I may, in response to my two colleagues from Iowa and Minnesota, first let me begin by saying that I find myself in general agreement with the idea of trying to resolve disputes other than going to litigation. In fact, I am a strong supporter of the product liability legislation. Some 7 or 8 years ago, Senator DANFORTH of Missouri and I put forward an alternative conflict resolution or dispute resolution procedure which did not get very far here. Certainly in medical malpractice, I am a strong supporter of trying to eliminate the need of going to the courts and all of the costs involved in it, the lengthy delays, the hardships.

On the basic issue of whether or not we ought to try to avoid litigation and to avoid matters being tied up in courts, I have no argument with that at all, but I think there are a couple of points that need to be made regarding this particular amendment, and it is a modified amendment from what was offered earlier. As I understand it, this is more voluntary, in a sense, than binding. So I certainly appreciate the authors of the amendment trying to at least move this debate a bit further along.

One point is that in this bill, we are dealing with the Fair Labor Standards Act. We do not change that at all. One of the complaints that we had received when I initially introduced the legislation is that we are setting up a new mechanism for dealing with disputes or litigation or problems. And that is why we utilized an existing body of law, existing agencies, an existing mechanism so as not to complicate matters. That was a good suggestion. We changed the law so that we now, on the dispute resolution or the enforcement mechanisms, follow virtually 50 years of the Fair Labor Standards Act. Of course, that act was adopted in 1938.

Rather than getting into some new areas, charting some new courses, we decided to stick with an existing tested and proven body of law. That is No. 1. No. 2, this is a different matter. We are not talking about a contract dispute between a union and management. We are talking about a basic minimum labor standard. So I think it is important for people to distinguish this is not a matter where you have parties coming to the table necessarily on equal footing. But the more important point to make to my colleagues on this particular amendment is that, frankly, if the facts are as I lay them out here, there is little need, if any, for this particular proposal, based on the experience of how the Fair Labor Standards Act works. I think it is important to make that case.

I point out third, Mr. President, thanks to the tremendous efforts of Senator BOND, Senator COATS, and Senator FORD who worked tirelessly in trying to come up with some legislation in this area, some ideas in this area, we were able to arrive at the point where S. 5 now completely parallels the procedures used for the Fair Labor Standards Act. These are the procedures, as I mentioned earlier, used by the Department of Labor to enforce minimum wage and overtime laws. Thus, we have a well-known, efficient approach that has worked for years.

The Senators from Iowa and Minnesota propose, of course, instead to create an unprecedented new system that would establish a new mechanism for arbitrating family and medical leave complaints; one that would put parties who appeal at risk and including the responsibility of both parties for attorneys' fees. I oppose this idea not because of what the Senator from Minnesota says, because it complicates where this bill could end up in the House given the strong feelings on this issue, but I think the facts indicate on this particular area it may not be necessary for the reasons I will state, Mr. President.

I hope my colleagues will agree that the Fair Labor Standards Act enforcement scheme embodied in S. 5 addresses all of their concerns.

Here is the point. I thought it was worthwhile to go back and to take a look at what had been the history of matters brought before the Department of Labor under the Fair Labor Standards Act. Based on available information, more than 97 percent, let me repeat that, more than 97 percent of all Fair Labor Standards Act cases are resolved without litigation. In 1990, the Department of Labor investigated 74,000 Fair Labor Standards Act cases and determined there were violations of law in 52,000 of the 74,000. Of the 52,000, only 2,081 cases were referred to litigation and two-thirds of the 2,081 cases were resolved without going to court. That is a remarkable record.

So if you begin with 74,000, with 52,000 involved in violation of law, 2,000 of them were actually referred to litigation and two-thirds of those were settled without going to court, in effect, we have an arbitration system, if you will, de facto under this law. Let me explain how it works.

Under this act, if a worker is denied, let us say, leave illegally—let us assume that—and loses his or her job, the worker has the following recourses under the bill: The employee contacts the Wage and Hour Division at the Department of Labor which enforces the Fair Labor Standards Act. The compliance officer investigates the complaint obtaining and reviewing records and meets with the employer and the employee to attempt to resolve the violation of law. If this family leave case follows typical patterns, it will be resolved at this stage. As I say, the overwhelming majority, thousands of them are resolved. In effect, it is arbitration. They bring together the parties and try to resolve it. There is no court action yet at all.

More than 97 percent of the complaints are resolved during that process, which I gather is exactly what the offerors of this amendment are trying to do, which does exist already in these kinds of matters.

If the compliance officer, however, cannot resolve the complaint, it is taken to higher levels of the agency for another round of meetings and arbitration. So if you are not satisfied, if you do not get it in the first case, the procedures require that you can go to a second round of arbitration. No one has gone to court yet. We want to keep people out of court if we can. If these administrative procedures do not work, the Department of Labor refers the case to the Solicitor's office for litigation. Again, in 1990, only 2.8 percent of the 74,000 cases were referred to litigation, and of those that were referred to litigation, two-thirds of them were settled without going to court. So de facto, Mr. President, we have arbitration here.

My concern would be if you decide to demand sort of an arbitration process with attorneys fees, you are in effect creating and inviting litigation, it seems to me, or creating yet another round of bureaucracy unnecessarily. Obviously, as a final step, the DOL can file suit on behalf of the employee in State or Federal court. Should the Department of Labor not file at this juncture, then the employee can sue directly. Such private litigation, I point out, is extremely rare. Of course, the Presiding Officer—I am preaching to the choir here—is a former Commissioner of Labor in the State of Pennsylvania and is more than aware of these matters. Obviously, I would like to think that my colleagues will understand that under the present system it works pretty well. Let me go on further.

My colleagues obviously should be able to see the strength of this enforcement approach. It is the informal, long-time expertise of the Department of Labor which comes into play. There are few legal costs involved, which is one of the things my colleagues are

trying to bring down, the costs that are staggering to people. And using the British idea of the loser pays, if you can avoid those kinds of costs in the beginning by having the first, second, and third phases of parties meeting with each other, then we are avoiding those costs and avoiding getting clogged up in the courts.

Because the Family and Medical Leave Act will not lead to a litigation bonanza, I believe there is little reason to consider an alternative to administrative review of complaints. It also establishes a time-tested procedure that allows workers and employers to obtain administrative investigation and resolution of their complaints without requiring that they hire a lawyer.

The PRESIDING OFFICER. The Senator has spoken for 10 minutes.

Mr. DODD. I ask unanimous consent to proceed for 5 additional minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DODD. Mr. President, the one thing you want to do is avoid hiring lawyers. The complainant goes to the Department of Labor. The Department of Labor handles it, so you are not out there trying to get your own lawyer. Obviously, when you get the employer involved, he does not have to hire a labor lawyer. The Department of Labor is not taking a side. They are interested in protecting the employer and employee. If you require that they go right into an arbitration procedure, the employer has to get his lawyers, the employee gets his lawyers and you know what happens then. It is not in their interest to see it resolved. The system that presently exists avoids that altogether, and it seems to me it would be in our interest to avoid, in a sense, inviting the kind of litigious activity that can occur.

At any rate, there are serious disadvantages, I point out as well, to the amendment. When arbitration is used in labor/management relations, the circumstances are very different. I tried to make this point earlier.

Arbitration is used to resolve disputes generally regarding union contract interpretation. The parties, both union and management, agree voluntarily to use a professional arbiter during the life of the union contract to rule on questions of contract interpretation rather than taking such disputes to court. Individual employees do not incur legal costs because they are represented in those cases by their union.

In union contract arbitration, the parties are in a position of equality. Union and management have negotiated the contract and have experience in taking such cases to arbitration. In contrast, under what my colleagues are proposing, a mother who has been told that she cannot take time off to care for a sick child is not on an equal footing with her employer and their lawyers.

An arbitration proceeding is neither informal nor inexpensive, I might point out as well. How is that mother who has a sick child, who lost her job, lost her health care benefits, going to feel when faced by an employer's attorney in an arbitration matter? That is not equal footing. And yet under the present system you get equal footing through the Department of Labor.

Would she not be much better off using the simple Department of Labor procedure that is accessible to lay people and the employer without being charged? I mean the very arguments my colleagues are raising I agree with. But I do not think there has been a thorough examination of what the existing procedures are and how it avoids exactly the very issues that they have raised: getting to court too early, heavy costs involving a litigious type of environment.

The present system does just the opposite and the facts speak loudly to that, when you are down, basically out of 74,000 cases that are filed, to roughly 600 ending up in court in 1990. These are the statistics. That is a very good record, a very good record, when you are able to resolve those matters without ever entering a courtroom.

At any rate, for those reasons, Mr. President, I respectfully urge and hope that my colleagues—as I say, on the issue of trying to come up with tort reform, I agree with them. I am an ally in that debate. I am an ally. But I think we have to be careful about taking that issue on tort reform, which is a very good issue and I think needed, and I am a strong supporter—I voted with it last year when we had the matter up on the floor. But taking that issue and applying it in this kind of a fact situation where already you have good dispute resolution mechanisms I think is a mistake.

So I would hope that my colleague from Iowa might consider, having discussed this a bit and realizing we are dealing with different fact situations—this is not product liability; it is not medical malpractice at all, where there is no means by which the parties can arbitrate their differences. Here we have a system, and yet we are now going to bring the lawyers into a system where they are not involved unless they get to the point where they have no other choice but go to court.

Why do you want to invite the lawyers in now if the reason is to try to keep them out? We have them out. What my colleagues are suggesting is bringing them in—exactly the opposite thing we ought to be trying to do. And I am an ally on tort reform. I am an ally on product liability. Those are different fact situations. They are in de novo right from the very beginning. We do not try to put it aside and get a new mechanism to replace that. Here they are out already and you are bringing them in.

From the standpoint of those who are truly interested in tort reform, this system works. It works very, very well. Now all of a sudden we are going to add a new dimension to it and change it.

So with all due respect, I have asked that they might consider, having discussed this, maybe withdrawing the amendment because, as the Senator from Iowa knows better than I do—he has tried to many times on so many different bills—we need to deal with tort reform. I agree with him.

My concern is that if we get a vote on this, it sends a signal I think that maybe we do not care enough about it. It is a very different fact situation. But nonetheless, if he persists in it, obviously I will be urging the defeat of the amendment because I think his amendment does exactly the thing that I know the Senator from Iowa wants to avoid doing.

Mr. President, I reserve the remainder of my time.

The PRESIDING OFFICER. The Senator from Iowa is recognized.

Mr. GRASSLEY. I yield myself 3 minutes.

Mr. President, the Senator from Connecticut has not said anything inaccurate, but he only deals with a part of the problem, and my amendment does not intend to deal with a part of the problem that he had described.

Before I go into that though let me make the point about the 600 cases. Now, 600 cases out of thousands of cases does not sound like a lot of cases. In fact, 600 cases would probably not be a problem for the courts. But 600 cases there and 500 cases there and 300 cases some place else just adds up to an exploding number of cases. Those additional filings are a major problem and we must deal with it. I am trying to deal with it here in a very specific way.

The Senator is accurate when he states that there are a lot of cases in which the Secretary of Labor can trigger the very expansive process he described. That administrative process will keep some cases out of court, and that process probably does work as he has described and does have the beneficial impact. But I seek to address another area of the bill and allow even more cases to be resolved out of the court, by using processes that are not so controversial, so adversarial, and so costly.

My amendment deals with the cases that will not be before the Secretary of Labor—where the individual employee wants to get directly into court immediately, without using administrative processes of the Department of Labor.

I am not arguing with the individual employee wanting to get into court immediately. If that employee wants to get into court, that employee should have that right to get into court. But in that instance, the process just described by the Senator from Connecticut will not stop those cases from

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being filed. Let me add, I do not intend to stop those cases from being filed because that is a right which ought to be preserved. But what I want to do is have a voluntary procedure, unrelated to the process which the Senator from Connecticut described. The intent is to keep some of these cases out of court and give a right of redress to a harmed person, if that person has been harmed, that is less costly, less adversarial, and works to get the dispute resolved outside of the courts.

The administrative process described by the Senator from Connecticut will not cover those cases where the employee immediately sues the employer in court. Hence, the need for my amendment. Under my amendment, the judge will have to tell both parties about the arbitration option; then they have to mutually agree that they want to use arbitration. Only those circumstances can arbitration be utilized. So, voluntary arbitration is a necessary option because the employee is not required to pursue his or her claim at the Department of Labor. That administrative process described by Senator DODD will not be applicable in all cases under this family leave bill.

I yield the floor.

Mr. DODD. Mr. President, let me just comment.

The PRESIDING OFFICER. The Senator from Connecticut is recognized.

Mr. DODD. I do not deny the logic of that argument, but there is no evidence it is the case. Six hundred out of 74,000 cases, that is not success nationwide under the Fair Labor Standards Act where you have an arbitration system? And what interest would there be for an employee who arguably has limited resources to go hire a lawyer to go into court and avoid the entire arbitration process when they can go to the Department of Labor and resolve the matter and receive the award without having to hire the lawyer and run the risk of having to, if they were the loser, pay all attorney's fees. It does not make any sense.

I agree, 600 cases may be a lot if you are talking about 1,200 filed but 74,000 complaints and you come down to roughly 600 cases that end up in court, that is a failure of the system, without getting into attorneys and litigation and costs? And here we are now going to set up yet another system inviting in a sense—at least it appears to invite—going into court.

I do not understand that. I know my colleague from Iowa would love nothing more than basically to have most matters in this country resolved at minimum cost to the employer and employee, and to get them over with as quickly as possible so you do not have the economic disruption and the people who deserve to be made whole are done so as quickly as possible.

If that is our mutual goal, why in the Lord's name are we setting up yet another system which invites the attorneys into the process where they are not presently allowed? I do not understand that. If the Senator's interest is in trying to encourage arbitration, the present system does just that. It has resolved the overwhelming majority of cases. The Senator now jeopardizes that system. He is not going to jeopardize that.

In fact, if you are on the side of those who want to minimize the involvement of attorneys, cost, and litigation, then frankly you ought to be absolutely on the opposite side of this amendment. This is a bonanza. This is once more, again, creating a pond or pool for people to swim around in to make their dollars in practicing law. I do not see the value of this at all, based on the facts.

Mr. President, I reserve the remainder of my time on this, and I do not want to use a lot more time on it. At an appropriate moment, I will move to table the amendment.

Mr. GRASSLEY. Mr. President, let my say in response to the Senator from Connecticut, that first of all, the process that he is talking about is based under 50 years of labor law, dating from 1938. There is a considerable amount of experience with that process. There is quite a track record, probably, in that process.

What we are talking about here is a whole new right. If the Senator from Connecticut, I ask, is so certain that the process he describes would work so well as it has in some other cases that have 50-year histories, then why does he give access to the courts for the solving of these disputes? But he does.

There is going to be, obviously, under new legislation, an explosion of these cases. It seems to me that we ought to provide a process for a new right that allows for arbitration, and even encourage that arbitration, but not have it be binding—have it be voluntary. This is what this amendment does.

I yield, Mr. President, 5 minutes, or whatever she uses, to the Senator from Kansas.

Mrs. KASSEBAUM. Mr. President, I think the Senator from Iowa.

I rise in strong support of the Grassley-Durenberger voluntary arbitration amendment. I do so because I really do believe that today we are engaged in too much litigation.

While the Senator from Connecticut makes a persuasive point that a number of cases have been settled without resort to lengthy litigation, we cannot be sure that adding additional requirements will not change the situation for the worse. Therefore, I think it is very important for us to make some provision in this bill to encourage arbitration.

Our Federal and State courts are clogged with pointless lawsuits. I think the amendment that is before us is designed to assure that family and medical leave claims do not contribute to further court backlogs.

So, for that reason alone, I think this approach has merit. I do not in any way believe that it would encourage further litigation. On the contrary, I think it allows for the circumstance for everyone to stop and think twice. It allows the parties to voluntarily choose to arbitrate, not litigate, any disputes that would come under this legislation.

The Department of Labor is charged with overseeing the process to assure that a list of qualified arbitrators remains available to the parties. One of the problems that has existed in the past, as I understand it, is that the Department of Labor has not been fully engaged in this arena. There have not been the staff available to really provide that kind of support system. This amendment would call for sufficient personnel and resources to provide that support system.

Moreover, the amendment contains strict timetables to assure that aggrieved employees can obtain the relief that they deserve.

The Grassley amendment authorizes the arbitrator to award the same remedies that Federal judges may award to employees who try their cases initially in court—for example, arbitrators may award reinstatement, lost wages, other equitable relief, and reasonable attorneys' and arbitrators' fees. Accordingly, the parties may choose arbitration and obtain a fair hearing with meaningful remedies.

For all of those reasons, Mr. President, I would encourage the parties to accept the arbitrator's decision and stay out of court. I think this is a positive approach, and I urge that my colleagues support this amendment.

Mr. President, let me reiterate that I support the Grassley-Durenberger voluntary arbitration amendment. The fact is that in this country, we have too much litigation. Our Federal and State courts are clogged with pointless law suits, and the Grassley-Durenberger amendment is designed to assure that family and medical leave claims do not contribute to court backlogs. This is an excellent idea and I commend their effort.

The Grassley amendment allows the parties voluntarily to choose to arbitrate their family leave disputes. The Department of Labor is charged with overseeing the process to assure that a list of qualified arbitrators remain available to the parties. Moreover, the amendment contains strict timetables to assure that aggrieved employees can obtain the relief that they deserve.

The Grassley amendment authorizes the arbitrator to award the same remedies that Federal judges may award to employees who try their cases initially in Federal court—that is to say, arbitrators may award reinstatement, lost wages, other equitable relief, liq-

uidated damages for willful violations, and reasonable attorneys' and arbitrator's fees. Accordingly, the parties may choose arbitration and obtain a fair hearing with meaningful remedies.

Mr. President, I would encourage the parties to accept the arbitrator's decision and to stay out of court. But in the event either party wishes to challenge the arbitrator's decision, the Grassley amendment allows the parties to choose that course.

However, if the employer challenges the arbitrator's decision, but the employer does not obtain a court judgment that is at least 10 percent less than the arbitrator's monetary award, then the employer must pay the employee's attorneys' fees and costs associated with challenging the arbitrator's decision.

Similarly, if the employee challenges the arbitrator's decision, but the employee does not obtain a court judgment that is at least 10 percent greater than the arbitrator's monetary award, then the employee must pay the employer's attorneys' fees and costs associated with challenging the arbitrator's decision. Thus, the amendment provides an incentive for the parties to accept the arbitrator's award; otherwise, the challenger might have to pay the opposing party's costs.

Mr. President, the Grassley-Durenberger amendment is long overdue. It will allow the parties to vindicate fully their rights under the Family and Medical Leave Act, and at the same time, decrease the backlog in our Federal courts. I urge my colleagues to vote for the amendment.

The PRESIDING OFFICER. Is there additional debate?

Mr. DODD. Mr. President, how much time remains?

The PRESIDING OFFICER. The Senator from Connecticut has 21 minutes 21 seconds.

The Senator from Iowa controls 15 minutes and 18 seconds.

Mr. DODD. Mr. President, I will check very quickly to see if I have any additional request for time. If not, I am prepared to yield.

Mr. GRASSLEY. Mr. President, in response to that, I have at least one more person on this side of the aisle who wants to speak. Then I will have to wait to give him time.

Mr. DOLE addressed the Chair.

The PRESIDING OFFICER. The Republican leader is recognized.

Mr. DOLE. Mr. President, was leader time reserved?

The PRESIDING OFFICER. Yes.

TALK SHOW DEMOCRACY

Mr. DOLE. Mr. President, for the past few weeks the phones have been ringing off the hook on Capitol Hill. Americans in record numbers have taken the time and trouble—and do not forget, the cost—to dial their elected Representatives to let us know how they feel. Most of the incoming fire has been directed at two controversial issues precipitated by the Clinton administration—the nomination of Zoë Baird, and gays in the military.

In fact, on those two hot potato topics, my four district offices in Kansas and my Washington office have received about 6,000 calls. Now, that sounds like democracy in action to me. But wait. The political correct police in the media have decided that it is not. It is not democracy, it is a disgrace. At least that is the spin we are hearing these days as the media comes to grip with some surprisingly tough competition.

It seems the new p.c. analysis is that all those Americans calling in were just following orders; that they were forced to pick up the phone because all those radio talk show hosts made them do it. In other words, please disregard all incoming phone calls—no matter how many and how often—because they are merely orchestrated hysteria. Instead, hang up and just listen to us, your friendly inside-the-Beltway, know-it-all media gods.

Well, it seems to me that one of the messages of the 1992 Presidential campaign is that the people have finally figured out a way to penetrate the steel curtain that has for too long surrounded Presidential campaigns. Voters "voted" for access by picking up the phone, tuning in their radios and TV's and, in some cases, talking directly to the candidates.

When the talk shows were helping catapult Bill Clinton into the White House, the talk show phenomenon was hailed as the new wave of American politics. If voters talked to Bill Clinton on the "Larry King Show," it was a high-technological breakthrough. If young Americans were wowed by the Democrat candidate on MTV, the media gods told us, then it was 21st-century America in action. But now, a few months later, if some talk show informs its listeners about the latest Clinton administration controversy, then it is just a bunch of radio and TV windbags rallying an audience of kooks.

It looks like a double standard to me. Lost in all the focus on phone calls is something old fashioned—writing your elected Representative. Believe me, we still get mail, and lots of it. My office gets about 10,000 cards and letters every month. We read it all. Together with the phone calls and letters, and face-to-face comments, I try to make the best judgment I can on the issues.

Now, my judgment is not always guided by the volume of calls and letters on either side of an issue. After all, we were elected to make tough decisions, and sometimes that means making votes that are not popular. But when someone takes the time, and spends the money, to call my office, I take that call seriously—each and every one—and so should the White House. Some may try to discredit the calls as meaningless statistics, but no elected official, or media pundit should lose sight of the fact that behind each call is a real person.

So let us calm down about talk show democracy. The political correct squad does not like it too much, but maybe that is the best endorsement I have heard yet.

Mr. President, I thank my colleagues and yield the remainder of my time.

FAMILY AND MEDICAL LEAVE ACT OF 1993

The Senate continued with the consideration of the bill.

Mr. GRASSLEY. Mr. President, I yield 5 minutes to the Senator from Kentucky.

The PRESIDING OFFICER. The Senator from Kentucky is recognized for 5 minutes.

Mr. MCCONNELL. Let me commend Senators GRASSLEY and DURENBERGER for their outstanding amendment. I started to take an interest in tort reform back in 1985. We have had a number of votes on the floor of the Senate on some portion of tort reform or another at the Federal level. Unfortunately, we have rarely gotten very many votes. But I think it is important to keep up the effort.

This amendment being offered today by Senator GRASSLEY certainly warrants consideration. It is a very meritorious proposal.

The family leave bill, like so many that go through this body, of course, is going to spawn a lot of litigation. While hailed as a victim's rights mechanism, in fact, the tort system in this country is a grossly inefficient means of resolving disputes.

This particular amendment is fair and reasoned to both plaintiffs and defendants. Arbitration is the method of alternative dispute resolution chosen in the Grassley-Durenberger amendment.

A court resolution of a dispute may take up to 2 to 5 years, as we all know, because of court backlogs. In the end, Mr. President, plaintiffs who prevail in court end up with only about 43 percent of the awards, because the rest is eaten up by administrative and legal costs.

Lest there be a knee-jerk reaction against anything wreaking of tort reform, let us be clear on what this amendment is and what it is not. It is not mandatory arbitration. As I understand the Grassley amendment, once a complaint is filed, a judge meets with both parties and will inform them of the availability of arbitration as a device to solve the dispute. Arbitration will not proceed unless both parties agree to it. They have to agree to it up front. Both parties choose the arbitra-

tor from a list provided by the Department of Labor. Either party may retain counsel for the arbitration proceeding.

This is not binding arbitration with limited judicial review. Neither party is bound by the arbitrator's decision. If one or both are not satisfied with the arbitration outcome, a de novo judicial review is available. The findings of fact and conclusions of law are fully reviewable.

There is incentive to abide by a reasonable arbitration decision in this amendment. If the party that proceeds to court after the arbitration ends up with less than the arbitrator awarded, that party pays the other side's attorney's fees. However, that party will not be required to pay more than the total of its own attorney's fees.

This amendment will benefit both employees and employers. An arbitration process is less costly and less time-consuming for both employees and employers. Employees aggrieved under the Family and Medical Leave Act are probably the least able to afford a protracted litigation.

Mr. President, I commend the Senator from Iowa for his leadership, and I urge my colleagues to support this most worthwhile amendment.

Mr. DODD. If the Senator will yield for a minute, I want to find this out before the Senator from Kentucky leaves. I am a strong supporter of tort reform and have voted for it, going back a number of years.

People are confusing tort reform with this. This is under the Fair Labor Standards Act, where you have a three-tiered arbitration process that has resolved—out of 74,000 cases filed in 1990, 600 ended up in court. What we are doing here is changing that and, in a sense, inviting going to arbitration, which requires hiring lawyers at a cost, if they decide to go that route, and legal fees being assessed based on the losers, if in fact you end up taking the arbiter's decision or rejecting it, as the amendment is crafted.

I do not understand, if somebody wants to avoid litigation costs, why—and the present system has been so successful of avoiding litigation, attorneys, and attorneys' fees—we want to create a way which sort of attracts people to go that route, rather than go with the existing system, where the overwhelming majority, thousands of cases, are resolved.

Mr. MCCONNELL. Well, I would say to my friend that this does not preclude the other means in existence, and that is certainly an argument for my friend's position, which I am certain is to have no amendments to this bill.

I am encouraged to hear that the Senator from Connecticut is a supporter of tort reform and is interested in the issue. I think it is going to come back time and time again in legislation in the coming months.

Virtually everything we do here has a litigation impact on somebody in America. I think it is high time—and I commend the Senator from Iowa for this—that we start dealing with tort reform on issues as they arise before the Senate, because we are creating reams of additional litigation with most of the legislative actions we take here, without any concern whatsoever about the impact of that on our economy and society.

Mr. President, I yield the floor.

Mr. DODD. Mr. President, I point out, as I wrap this up, that this is a great irony. What, in a sense, what we are doing here is creating, in effect, for those people who are annoyed about too many attorneys involved in matters, costs involved, this amendment creates a system that will attract, in my view, more people to seek out this approach than the existing one, which involves no lawyers, a three-tiered system for arbitration. For the very people who suggest they want to minimize the involvement of litigation and attorneys and the costs, this does exactly the opposite.

So I appreciate the motivations, but as somebody who goes back years supporting tort reform, you are, in a sense, your own worst enemy with this amendment. Out of 74,000 cases in 1990, 600 ended up in court because of the arbitration system in place. You are calling now for attorneys to be hired to represent employers and employees in an arbitration system which gets them into court—in a sense, attracting them away from the present system, which has been tremendously successful in avoiding litigation.

I am just stunned, in a sense, that we are arguing for something which has merit in tort reform; in the absence of the Fair Labor Standards Act, where that does not apply, you are right. But you have a system that does not exist in other areas. Why we are jeopardizing a system that has worked so well, I do not know. For a legitimate case, such as a product liability, medical malpractice, and the like, you are right. We tried—Senator DANFORTH and I—8 years ago, offering this approach. We got creamed on it out here.

I am a supporter of that approach, but you are jeopardizing an approach which has worked in this area by calling for the establishment of a system that invites attorneys to get involved in the case.

I reserve the remainder of my time.

Mr. GRASSLEY. Mr. President, how many minutes remain on both sides?

The PRESIDING OFFICER (Mr. KERREY). The Senator from Iowa has 9 minutes, 36 seconds. The Senator from Connecticut has 18 minutes, 27 seconds.

Mr. GRASSLEY. Mr. President, I yield myself 4 minutes at this point.

First of all, this family leave bill is not a tort reform bill. It gives statutory rights to working persons who need to be accommodated to care for an ill relative or a newborn child. So the equating of my amendment with tort reform is totally out of place and is creating a smoke screen. We are talking about issues and rights that affect families. Lawsuits can take 2 to 5 years to be resolved in the court system. Families cannot wait 2 to 5 years for their rights under this statute. Those need to be responded to very, very quickly. And that is part of the rationale behind my amendment of voluntary arbitration.

The other point that the Senator from Connecticut makes concerns an administrative procedure that he has followed under the Fair Labor Standards Act. Under that act, there is an administrative process that operates to resolve fair labor standards cases without resort to the courts. That process has probably worked well to resolve FLSA cases, dating back to 1938, when the Fair Labor Standards Act became law. But there is something different between the mechanism that exists and the bill that is before us. The argument made by the Senator from Connecticut presumes there is a requirement of the exhaustion of administrative remedies. There is no such exhaustion requirement in his bill. There may very well be a practice of using administrative remedies under the Fair Labor Standards Act disputes. That practice may result in the vast majority of wage/hour cases getting resolved without litigation. But creating a new right without requiring exhaustion of administrative remedies will surely lead to lots of lawsuits.

Now if he would put that exhaustion requirement in his legislation, then he could be making a good point why the voluntary arbitration proposals of Durenberger and Grassley are not needed. But because there is not such an exhaustion requirement, he is making a very good argument why our amendment should be adopted. But, most important for anybody listening, please do not get our amendment mixed up with the very important subject of tort reform. Our amendment will give families a good way to solve a dispute. We are talking about people who need, if there is a dispute, a remedy that is going to be very quick and easy. And that is what the Grassley amendment is all about.

I yield the floor.

Mr. DODD. Mr. President, I yield myself 1 minute.

The PRESIDING OFFICER. The Senator from Connecticut is recognized.

Mr. DODD. Mr. President, let me point out to my colleagues that Senator BOND, Senator COATS, Senator FORD, we spent a lot of time over the last 7 years putting together an enforcement procedure here that makes sense in a bipartisan way.

I appreciate again my colleagues who are interested in tort reform as I am,

but please respect in the sense that we have spent literally months and years fashioning this legislation with countless meetings and efforts to come up with an intelligent workable system. And while there is a legitimate case to be made on tort reform, please do not confuse the two subjects. In a sense, respect the works and labor that have been done to make this a viable product here. Unfortunately, what we are doing here is how changing the results in all of this, and in an unwarranted fashion in my view, given the arbitration fashion that exists. And we debated that.

But with respect, I would ask the work of Senator BOND and Senator COATS and Senator FORD and others who have really tried very hard at the request, I might point out, of the business community, who asked us not to set up some new enforcement mechanism, not change the rules, but to use existing standards, the Fair Labor Standards Act since 1938. And so this enforcement mechanism is used in exactly the same way it has been used to resolve through arbitration matters that have been brought before it. What my colleagues from Iowa and Minnesota want to do is to change that, creating the kind of uncertainty in a sense the business community and others are concerned about.

So in respect, I would ask the work that has been done to put something together that has involved all of the necessary parties and elements across the country.

Mr. President, does my colleague from Ohio seek a minute?

Mr. METZENBAUM. I would like to be heard.

Mr. DODD. I yield 2 minutes to my colleague from Ohio.

The PRESIDING OFFICER. The Senator from Ohio is recognized.

Mr. METZENBAUM. May I ask the manager, is there not a sufficient amount of time for the Senator from Ohio to have 10 minutes?

Mr. DODD. I apologize to the Senator. I was trying to wrap up. How much time does the Senator need?

Mr. METZENBAUM. Ten minutes.

Mr. DODD. I yield 10 minutes to the Senator.

Mr. METZENBAUM. Mr. President, I sought 10 minutes because it is my view that this is a major matter. I think we are getting close to wrapping it up. We are finally going to send a family and medical leave bill to a President that will sign it. We are now faced with an amendment that I think would be hurtful, confusing, and would not work in the interests of the workers of this country, nor of the employers for that matter.

This amendment would actually establish an arbitration procedure for claims filed under the Family and Medical Leave Act.

The idea behind it is to avoid litigation. I think most of us would agree that quite often the arbitration process is a good road to go in order to avoid the complications of court procedures. But this bill already has a mechanism avoiding litigation.

Under the bill's provisions, an employee unlawfully denied leave can either file a complaint with the Department of Labor or go to court. The bill provides for an administrative complaint-handling process at the Department modeled on the Fair Labor Standards Act.

This process has been tremendously successful in the past, in resolving claims short of litigation. In fact, more than 97 percent of all FLSA cases are resolved without litigation. There is no reason to think this process would be any less successful if we apply it to family and medical leave claims.

In addition, the proponent of the amendment, my friend from Iowa, contends that it involves "nonbinding" arbitration. But on close examination, it is very binding on the complainant.

Under this amendment, if both parties agree to arbitrate, but they both reject the arbitrator's decision, and proceed to trial, the plaintiff cannot recover attorney's fees even if he or she prevails. That turns our system of justice on its head—workers would have to pay to enforce their rights.

Now, frankly speaking, we are close to passing a family and medical leave bill and sending it to the President. The distinguished Senator from Connecticut has been working on this subject for 7 years, and many of us have been attempting to help him.

For America's working men and women, it is about time. Our work force—100 million strong—knows all too well how difficult it can be to balance work and family. And with more and more families relying on two incomes to make ends meet, this balancing act is only going to get tougher. Quite simply, passing this bill is the right thing to do for these workers.

When a working woman bears a child, she needs leave. When a worker is a primary care-giver for a child or an elderly parent, and that child or parent gets sick, that worker needs leave. When a working man has a serious illness, he needs leave. No one would dispute that these workers need leave.

But some in the business community say, "don't mandate leave. Let us provide it voluntarily." Well, there are plenty of companies that have been responsible enough to do just that—and I commend them for it. But there are plenty more that have not.

Even in the biggest companies, half of all working mothers have inadequate maternity leave or no leave at all. Roughly a third of American businesses provide no sick leave.

Older workers increasingly have primary responsibility to care for their parents. But only 14 percent of American businesses permit elder care leave for a parent's serious illness.

Workers are all too often faced with an agonizing choice between their job and their family. This legislation allows workers to have both—job security along with the time needed to care for a seriously ill family member. No worker should lose a job because he or she needs to take a few days or a few weeks off to care for a newborn infant, a sick child, or a dying parent or spouse.

Some have expressed concern about whether this bill will help low-income workers. But it is low-income workers who are most dependent on two wage-earners, and who are most likely to have no leave. When a low-income worker has to take leave for an illness or a family member's illness, this bill ensures that he or she will have a job to come back to.

It is hard to understand why some in the business community continue to oppose this legislation. Frankly, their arguments are absurd. First, in a study of States that already require family and medical leave, 9 out of 10 employers said the requirements were not difficult to implement.

Second, let us remember that this bill provides only unpaid leave. The only cost employers face is continuing health care benefits, which GAO says will cost roughly $10 per worker per year. According to the Small Business Administration employee leave survey, these costs are substantially smaller than the costs of terminating and replacing workers who need leave. The bottom line is that providing leave is good for an employer's bottom line.

Third, the bill's small business exemption nearly swallows the rule, exempting 95 percent of the businesses in this country. As a result, 60 percent of our work force will not be protected by this bill.

Let me make this clear: This bill ought to protect all workers, not just an arbitrary fraction. A worker's right to take family or medical leave should not depend on whether he or she works for a big company or a small one. But I recognize that compromise is part of the legislative process, and I strongly support this bill as a first step toward providing leave to all hardworking Americans.

Mr. President, this pro-family legislation is a matter of basic human decency. Over 70 percent of Americans support it, as has the great majority of this body. Senator DODD is deserving of great praise for laboring for 7 years to see this bill become law. For America's work force, it is about time.

Mr. President, this is major, major legislation. It will have an impact upon this country for the rest of our days and years. The amendment offered by my colleague from Iowa is well intentioned, but I believe that it will only confuse the issue and would be a major setback in the enactment of this legislation. I hope that, at an appropriate

time, the manager of the bill will see fit to move to table the amendment. I will certainly support that.

Mr. GRASSLEY addressed the Chair.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. GRASSLEY. Mr. President, in consultation with Senator DODD, I would like to suggest that I will take one more minute and then yield back my time unless something new comes up here. This is just kind of a summation.

Mr. President, this amendment ought to be good for the proponents of the bill because this process is going to make the new rights for the workers in this bill more real because there is going to be a more inexpensive way of exercising those rights.

For opponents of the bill, it is a fact of political life that this legislation will become law. So the opponents should want, then, to have this bill work the best way possible as long as it is a fact of life, and my amendment will do that as well. The whole idea is to keep these disputes for workers out of the adversarial and costly environment of the courtroom and to offer a nonbinding, voluntary approach called arbitration.

Arbitrators will issue a judgment within 6 months or less. The cases that wind up in the courts of this country will not give workers, under this law, what they will be entitled to. We all know too well that justice delayed is justice denied. With the burgeoning workload of our courts, the result is, in a very real sense, will be a denial of their rights under this bill.

This amendment is put forth as an effort to see that whatever justice and rights come to workers under this legislation turn out to be real and do not turn out as fantasy.

So I suggest that this amendment is a good amendment that ought to be adopted and ask for my colleagues' support. I am prepared to yield the remainder of my time.

Mr. LEVIN. Mr. President, I am voting today to table the Grassley-Durenberger amendment because I agree with the bill sponsors that we should not create a separate system for deciding family leave disputes under the Fair Labor Standards Act. I would, however, be interested at a future date in exploring amending the whole fair labor standards law to encourage binding arbitration.

Mr. DODD. The Grassley-Durenberger amendment does raise interesting points in the area of dispute resolution, and I would be willing to explore this area in relation to the entire Fair Labor Standards Act in the future.

Mr. President, I have no further requests for time. I yield back the remainder of my time.

Mr. GRASSLEY. I yield the remainder of my time.

Mr. DODD. Mr. President, I move to table the Grassley amendment.

Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the motion to lay on the table the amendment offered by the Senator from Iowa [Mr. GRASSLEY]. The yeas and nays have been ordered. The clerk will call the roll.

The legislative clerk called the roll.

The result was announced—yeas 53, nays 47, as follows:

[Rollcall Vote No. 3 Leg.]

YEAS—53

Akaka	Ford	Metzenbaum
Baucus	Glenn	Mikulski
Biden	Graham	Mitchell
Bingaman	Harkin	Moseley-Braun
Bond	Heflin	Moynihan
Boren	Hollings	Murray
Boxer	Inouye	Nunn
Bradley	Jeffords	Pell
Breaux	Johnston	Pryor
Bryan	Kennedy	Reid
Byrd	Kerrey	Riegle
Campbell	Kerry	Robb
Daschle	Kohl	Rockefeller
DeConcini	Lautenberg	Sarbanes
Dodd	Leahy	Simon
Exon	Levin	Wellstone
Feingold	Lieberman	Wofford
Feinstein	Mathews	

NAYS—47

Bennett	Durenberger	McConnell
Brown	Faircloth	Murkowski
Bumpers	Gorton	Nickles
Burns	Gramm	Packwood
Chafee	Grassley	Pressler
Coats	Gregg	Roth
Cochran	Hatch	Sasser
Cohen	Hatfield	Shelby
Conrad	Helms	Simpson
Coverdell	Kassebaum	Smith
Craig	Kempthorne	Specter
D'Amato	Krueger	Stevens
Danforth	Lott	Thurmond
Dole	Lugar	Wallop
Domenici	Mack	Warner
Dorgan	McCain	

So the motion to lay on the table the amendment (No. 3) was agreed to.

Mr. DODD. Mr. President, I move to reconsider the vote.

Mr. KENNEDY. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The Senator from Virginia is recognized.

Mr. ROBB. I thank the Chair.

Mr. President, I rise today in support of S. 5, the Family and Medical Leave Act of 1993. I would like to begin by commending my distinguished colleague from Connecticut, Senator DODD, who has worked tirelessly on this important legislation during the entire time that I have had the privilege of serving in this body.

I support S. 5 because I honestly believe that it embodies a reasonable balance between the needs of employees and the interests of businesses. While a great deal of care has been taken to minimize any hardship on businesses, especially small businesses, this legislation provides critical protection for covered workers and their families.

Mr. President, 56 percent of all mothers with children age 5 and under are in the work force. According to the Work Force 2000 Report, two-thirds of all newcomers into the work force through the end of this century will be women. At the same time, the elderly population has grown dramatically during the last decade.

At a women's health seminar I held last June in Fairfax, a session on caring for and parenting the elderly was especially popular. I was surprised at how many families in northern Virginia are urgently seeking information on access to services for elderly parents.

S. 5 helps meet the needs of this changing society. It requires businesses to allow up to 12 weeks of unpaid family and medical leave during a 12-month period. It covers the birth, adoption, or placement of foster care of a son or daughter, the care of a son, daughter, or parent with a serious medical condition, and a serious medical condition which renders an employee unable to work.

The bill requires employers to continue to contribute their share of health insurance premiums and, when leave is completed, to simply reinstate the employee at a comparable position and equal salary.

I am fully aware that a strong, healthy economy depends on strong, healthy businesses, and I take questions of unnecessary Government interference and Government overregulation very seriously.

S. 5 only covers businesses with more than 50 employees, thereby exempting 95 percent of all employers. It further restricts employee eligibility by requiring that workers have at least 1 year with the employer and have worked at least an average of 25 hours per week.

S. 5 also includes an exemption for key employees, certification provisions to combat abuse, and notification to allow employer flexibility.

Moreover, several studies have indicated that placing employees on leave actually costs businesses less than replacing them. And for businesses that currently offer adequate leave to their employees, this legislation really should pose no hardship at all.

Through the years, Congress has required businesses to pay Social Security taxes, has established a minimum wage floor, and has implemented OSHA regulations, child labor laws, and prohibitions against workplace discrimination. But Congress has never protected an employee's right to be sick and return to work, to have a child and return to work, and to care for a sick parent or child—or even a dying parent or child—and return to work. I think it is time that we did so.

This legislation provides a safety net for some average Americans who play by the rules, as our President likes to

say, and fall on hard times. They are working Americans who want to keep working, keep paying taxes, keep their families together, and just make it through. They will not get paid while they are away from the office, but they will have a chance to keep their health insurance when they need it most and ultimately get their job or a comparable job back again.

Mr. President, I compliment my friend from Connecticut for bringing the Family and Medical Leave Act of 1993 to the floor of the Senate once again, and I am very pleased to be able to add my support.

Mr. President, I yield the floor.

Mr. DODD addressed the Chair.

The PRESIDING OFFICER. The Senator from Connecticut is recognized.

Mr. DODD. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. DODD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DODD. Mr. President, I ask unanimous consent that Senator KASSEBAUM now be recognized to offer an amendment, with the time until 2 p.m. today equally divided and controlled in the usual form on the amendment; that no other amendments or motions, other than a motion to table, be in order prior to the disposition of the Kassebaum amendment; and that at 2 p.m., the Senate vote on or in relation to Senator KASSEBAUM's amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mrs. KASSEBAUM addressed the Chair.

The PRESIDING OFFICER. The Senator from Kansas is recognized.

AMENDMENT NO. 11

(Purpose: To permit employers to satisfy family medical leave requirements by offering such leave as a benefit in a cafeteria plan)

Mrs. KASSEBAUM. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report the amendment.

The legislative clerk read as follows:

The Senator from Kansas [Mrs. KASSEBAUM] proposes an amendment numbered 11.

Mrs. KASSEBAUM. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

In section 102 of the bill, add at the end the following:

(g) REQUIREMENTS CONSIDERED TO BE SATISFIED IF CAFETERIA PLAN PROVIDES FOR LEAVE.—

(1) IN GENERAL.—Notwithstanding any other provision of this Act, an employer shall be considered to have satisfied the requirements of this title with respect to any employee if—

(A) such employee is a participant in a cafeteria plan, as defined in section 125(d) of the Internal Revenue Code of 1986, that is maintained by the employer;

(B) section 125(a) of the Internal Revenue Code of 1986 applies to the benefits under such cafeteria plan; and

(C) a participating employee is eligible to choose, as a benefit under such plan, a family and medical leave benefit that provides family and medical leave rights identical to, or greater than, the rights provided under this title, including any right of the employee under—

(i) this section, or

(ii) section 104 (including the rights under such section to be restored to employment and receive continued coverage under a group health plan).

(2) REGULATIONS.—The Secretary of the Treasury shall issue regulations establishing methods for employers to value such a family and medical leave benefit under such a cafeteria plan.

(3) CONSTRUCTION.—Nothing in this subsection shall affect—

(A) the duties or liabilities of an employer under this title with respect to an employee; or

(B) the right of any person to enforce the requirements of this title against an employer with respect to an employee,

unless the employee elects not to receive such a benefit under such plan.

Mrs. KASSEBAUM. Mr. President, the amendment I send to the desk permits employers, who offer a selection of employee benefits under a flexible cafeteria plan, to include family and medical leave as one of the employee's choices.

As long as the family and medical benefit is offered as part of the employee benefit selection, then the requirement that family leave be offered to each employee would be deemed satisfied. By allowing the family and medical leave mandate to be included as part of the cafeteria plan selection, my amendment allows employees to choose the benefits that they value the most.

If employees truly want family leave, and many do, they can select it under the cafeteria plan. On the other hand, if some employees would rather have more paid vacation, orthodontic care, for instance, or child care rather than family and medical leave, they can make that choice under the cafeteria plan selection.

Mr. President, we need to be honest and make clear to the public that passing unfunded employee benefits is not without cost to either the employer or the employees. This amendment underscores the point that passing unfunded mandates is not without choices and tradeoffs.

Employers must offset the cost of this unfunded mandate. Employees must understand that other employee benefits may very well be reduced to offset this cost. If employee benefits are going to be reduced to pay for this new mandate, I believe, to the extent possible, the employees should be given the opportunity to determine whether they want this benefit and to identify which benefits they are willing to give up in order to pay for it.

The issue really is whether we want employees to decide which benefits they need or whether we want the Federal Government to make the decision for them. My amendment offers an opportunity for the employees themselves to decide which benefits they want, including family and medical leave.

In order to qualify, the employer must offer a so-called cafeteria plan, as defined by the Internal Revenue Code. Cafeteria plans, also known as flexible-benefit plans, allow employees to select from an array of benefits those they value the most and that meet their specific family or lifestyle needs.

Typically, benefits offered in the cafeteria plan include a variety of health benefits, together with other options such as life insurance, 401(k) plans, and flexible vacation time. Some now even offer child care. The number of cafeteria plans is growing rapidly and polls indicate they are very popular among employees.

This amendment is very straightforward. If a cafeteria plan includes the option of family and medical leave, then the requirements of S. 5 will be considered satisfied.

The amendment is narrowly drawn. It will not provide a loophole. Employers must provide a family and medical leave plan at least as generous as the requirements of S. 5 among the options in the cafeteria plan. The enforcement provisions will still apply, and the Internal Revenue Service will issue regulations to ensure it will not be abused. We need to be frank with the American public that, by adopting minimum Federal leave standards, employer may have no choice but to offset the cost of this unfunded mandate by reducing other employee benefits.

It is something about which, Mr. President, we are just not certain, and it seems to me far better for us to approach this issue when we all recognize that many types of benefits including family and medical leave, are important benefits. This amendment at least would allow the employer and employee to be drawn into the choice process.

This raises the question of whether we are being fair to employees by legislatively giving them a new benefit in the form of unpaid family and medical leave, but putting their employers in the position of having to reduce some other employee benefit which they may value more.

This amendment makes clear the obvious tradeoffs that occur by passing unfunded mandates and gives employees the chance to make a decision as to which benefits they find to be the most valuable. For example, an employer

currently offering employees 3 weeks of paid family and medical leave may drop this benefit and instead offer only 12 weeks of unpaid leave as required by law. There would be nothing to prevent an employer from deciding to take that option. And it could be that the employee would prefer to have the 3 weeks of paid leave instead of the 12 weeks of unpaid family leave.

Under this amendment, employers would be given the flexibility to offer both options as part of their cafeteria package, and it gives employees the right then to select the leave option most helpful to their particular situation.

I have already expressed my concern that if Congress mandates certain benefits, it may discourage the growing trend toward more flexible benefit plans. Changing demographics—more women in the workplace, more husband-and-wife wage earners, and more working families with children—make it vitally important, I believe, Mr. President, that we keep the flexibility necessary to meet these changing needs.

This amendment would further encourage the use of flexible benefit plans but, more importantly, it will let employees and not the Federal Government choose which benefits best suit their own needs.

I would like to include at this point, Mr. President, an editorial that appeared in the Wichita, KS, Eagle yesterday that questioned the wisdom of mandating family and medical leave and suggested that a more flexible approach would be a far sounder way to assist families when they are trying to meet family and medical emergencies. I ask unanimous consent that it be printed in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

[From the Wichita Eagle, Feb. 2, 1993]

MANDATE: FAMILY-LEAVE PROPOSAL HURTS WORKERS, EMPLOYERS, ECONOMY

One campaign promise President Clinton is virtually certain to keep is enactment of the family-leave bill. The measure has been a top Democratic priority for years, and without a Republican veto in the White House it looks as if American workers will have to live with the consequences of a well-intentioned but ill-conceived bit of social policy.

Family leave sounds good—12 weeks a year of unpaid time off to allow workers to deal with childbirth, adoption or serious illness to a family member. Indeed, it is a good idea. That's why most of the country's more enlightened employers already offer such a benefit.

But family leave comes with a cost to workers and employers.

Most employers can afford only a limited employee-benefit package. In effect, the mandate pushed by Mr. Clinton and congressional Democrats tells employers that family leave is a more important benefit than any other. The politicians are saying that some workers may be forced to trade wages and other fringe benefits, such as vacation time, for a family-leave benefit.

Many firms realize that the same benefit package does not suit the individual needs of all their employees. That's why the trend is toward "smorgasbord" type plans where employees can pick from a menu of benefits. Some people, for example, may want family leave; others may want more vacation time; still others may prefer more comprehensive medical care.

Family leave reduces employers' flexibility in meeting the personal interests of their employees.

The point is that family leave is not a cost-free benefit provided out of the good hearts of the president and congressional Democrats. Rather, it is a potentially costly benefit for many companies, a hardship on some workers and another example of how government social engineering is weakening the American economy.

Mrs. KASSEBAUM. Mr. President, I yield the floor at this time.

Mr. DODD. Mr. President, I yield 5 minutes to the distinguished junior Senator from Washington.

Mrs. MURRAY. Mr. President, I rise in opposition to this amendment. Although I believe it is well-intentioned, I fear that it would really lose the spirit of the Family Medical Leave Act if it were to be included in this bill.

This amendment would allow employers to provide family and medical leave under a menu of benefits that are offered to employees and called cafeteria. When an employee comes on, they would be given so much money that they would be allowed to choose whether they wanted family leave, health care, or some of the other benefits offered.

Mr. President, I urge all of us to remember that this act is put in place so that emergencies can be taken care of. Very few people, when looking at a cafeteria-style plan, would think that perhaps they would have a parent with a heart attack that they may need a few days off to care for or that they may become pregnant during the year and need time off for pregnancy leave, or that some serious accident would occur that they would need time off to care for family.

The intent, the spirit, of the Family and Medical Leave Act is to care for emergencies. I think it is very important that we offer and provide it for employees based on that spirit. I also believe that very few employers provide a cafeteria-style plan. In fact, only 5 percent of American businesses do so.

So I think, in order to keep the integrity of this Family Medical Leave Act as it has been put together by the Senate so carefully, we must oppose this amendment. I urge my colleagues to do so.

Thank you.

Mrs. KASSEBAUM. Mr. President, in response to my colleague from Washington State, I would say that I do not believe this amendment detracts from the spirit of what we are trying to accomplish with this bill. In fact, I think that, really, it creates what I believe is a very important option for employees. What you are really saying is that the Government is in a better position to know what is best for workers than the workers themselves. This is the worst kind of paternalism.

It is very true we do not know what emergencies may arise. That is true for any of us. But I think we do tend to know, when we are working with a flexible-benefit program, what means the most to us at any given time. Someone who is 25 may have very different options than someone who is 50. I think it is very important to allow that flexibility.

Employers can make new selections each year, and it is my understanding that in the case of emergencies, employees can change their own selections. I think most plans would allow for contingencies in case of emergencies that arise.

The amendment, I argue, underscores the point that there are choices and tradeoffs that are associated with mandating benefits.

I am certainly hopeful that this amendment succeeds. All of us have said that we have no quarrel with the concept; but just how it is arranged and put together and who determines what is in it and when it is triggered is really the question.

I think that this amendment would encourage employers to include family and medical leave in their cafeteria plans. Prior to this time, no cafeteria plan has included family and medical leave. This amendment really encourages that participation, and that is why I think it has much merit, Mr. President.

(Mr. SHELBY assumed the chair.)

Mr. DODD. Mr. President, let me begin by, first of all, thanking the Senator from Kansas for her work and effort on this bill and some of the ideas she has put forward. We have had the pleasure of working together on numerous other proposals.

This amendment, in effect, is a substitute, Mr. President, because it changes the whole nature of the legislation. Other amendments that have been offered do not go to the very heart of the bill. They deal with various aspects of it—enforcement, or consent, or notice, and the like.

What the Senator from Kansas is offering here changes fundamentally what we have voted on twice now here in the Senate—the last time was a rather overwhelming vote—in that it takes away a mandate. This, in a sense, eliminates the mandate.

I think there is a fundamental distinction here. Many people argue here that there is an additional benefit to employees. For those of us who have worked on this bill, this is not a benefit, family and medical leave. This is a minimum labor standard. I think it is on that specific point that there is a significant disagreement.

If we argue just benefits here—a dental plan, a vacation day, some other issue like that—then arguably the notion of cafeteria plans and the like would make some sense. But from my standpoint, what I am talking about as the author of the bill, and what has been part of this negotiation over 7 years, is a basic minimum labor standard. That is fundamentally different than a benefit. There is a distinction. Occupational safety and health is not a benefit. That is a basic minimum labor standard. Child labor laws, Social Security, other such matters that are very basic, we do not leave up to cafeteria plans or the choices of the employer. We do not say to the employer, look, we would like you to have a good dental plan or safety in the workplace. That is not a viable exchange, because occupational safety and health is a basic minimum standard.

What we are arguing for, and what is in this bill and is the essence of this bill, is a basic minimum standard. That is, if something happens to your child, to your spouse, to the parent you are caring for, and you need to be with them, having passed all of the other criteria, obligations, and notice, that you have the right to be there with them, except for those employees who are exempt; and, of course, you must be an eligible employee.

So in a sense it is a critical, underlying, fundamental point. To that extent, there is a fundamental difference in how you look at these issues. If it is seen as just a benefit, then the notion of a cafeteria idea may have some appeal. If you understand it as a basic minimum standard, in today's world with today's demographics and the problems that families face as single heads of households or as a two-income-earner family trying to make ends meet, when you are faced with a crisis of choosing between the job you need and family you love, we are saying you ought not to be placed in the position of making that choice. You are going to get job security without pay, maintaining your health insurance while you deal with that underlying family crisis.

There is another point to this. People have cited over the last couple of days that people do not care about family and medical leave. When you ask people what are the sort of benefits you like, they do not list family and medical leave as one of the ones they care most about.

In my experience, Mr. President, nobody ever thinks that their child, their wife, their parent, is ever going to be in any kind of serious crisis. It always happens to the neighbor, to the coworker, and it always happens to someone else. It never will happen to me. My family is invulnerable. Nothing bad will happen.

The fact of the matter is that bad things happen to a lot of people a lot of the time, and it does not discriminate. Those people who are least capable of managing their lives because of economic circumstances need relief. You do not normally think your child is going to end up in an emergency room. So when they ask you for the benefits you want, you do not anticipate that your spouse is going to be receiving chemotherapy, or that your parents are going to have Alzheimer's. Whoever thinks about that? No one wants to think about it. But a dental plan, yes, I want my teeth cleaned. I want to go on a vacation each year. But my kid, dying in a hospital, that is never going to happen to me.

So there is an instinctive natural repulsion at including these kinds of benefits as part of the things that people request in the normal course of listing one of the preferential benefits. Yet, it is fundamental here. This is not a question of somebody going off and enjoying themselves. This is not going fishing. We are talking about dealing with a crisis—a newborn child, the adoption of a new child, a serious, serious medical condition for a family member you are responsible for caring for.

This is not something people welcome, except adoption and birth. These are not crises that people enjoy. We are just saying, in the midst of those, you have your job security, without pay, and your insurance benefits. Saying we will provide this to you if it is part of a cafeteria plan changes the whole nature of what the 7-year-long effort has been about, what Senator BOND and Senator COATS and I have worked so hard on to pull together.

Let me mention a couple of other points about this. As I mentioned, family leave is not a benefit per se. I do not think it ought to be placed in the category of a cafeteria plan which has much greater dollar value and frequency of use.

According to a 1990 Small Business Administration study, S. 5 would cost business—that study says $6.90. The new study says $9.50 per covered worker per year, exclusively for the continuation of workers' health insurance coverage while on paid leave.

The 1993 GAO study indicated the cost to be less than $9.95 per covered worker, solely related to the continued insurance coverage. For the purposes of benefit comparisons, family leave is more analogous, I suppose, to those benefits which usually are core benefits. That is what I am trying to explain.

I want to show this. We have here, if we accept generally the cost numbers, $9.50 per covered worker per year. Where does that fall into the category of other benefits that are applied or available to employees? Let me bring this chart over here, because I want my colleague to see this as well. Overall, according to those firms—this is a source of the U.S. Chamber of Commerce, these numbers, the benefits packages, annual cost to employer per worker in 1991 of all of the benefits available. On the average, it is about $13,000 a year benefit packages to those businesses in this country that are members of the Chamber of Commerce. Not everybody is, but these are the Chamber's data. Medical benefits, roughly $3,465 to an employee. Legally required benefits—and that covers a lot of small items—total roughly $3,000; pensions are $1,900, almost $2,000; vacation amounts to roughly $1,800 a year; holidays, another $1,000; sick leave, $392. And the estimate of the SBA and GAO now make that change, and that number that says $6.70, make that $9.90, as a result of increased health care cost, and add 200,000 new people in the work force. That is $6.70 cents a year in comparison to these other benefits.

So you have these high-cost benefits and here the $9 or $10 per covered worker per year as opposed to almost $3,500 on medical, pensions, vacations, holidays and the like. So, in a sense, by putting this on a cafeteria plan and saying employees can choose, or we will choose, obviously the one that costs $10 is going to be much more attractive in some ways than the one that costs $3,000 or $4,000. So it really does put them on unequal footing in that sense.

Less than 5 percent of employers in this country and 9 percent of employees have flexible cafeteria benefit plans. I presume my colleague from Kansas would argue if we include this and expand it, then we will get more people on cafeteria plans. But, as of today, it is only a small fraction of people who are covered by these so-called cafeteria plans.

However, where such plans are available, statistics show that family leave policies are never included. We have spoken to every employee benefit organization that we could find in the United States and none, not a single one, was aware of any situation in which family leave programs were a part of such plans. Despite the fact there are many businesses in this country that have cafeteria plans, and that have family and medical leave, in none that we could find was family and medical leave included in any of the cafeteria plans.

They informed us that the monetary value of a leave policy is impossible to calculate from their standpoint, so employers and employees have no way of assigning values, as they say, to the regular benefits. There is the other argument, of course, that said by including this, and mandating it, that other benefits will be denied, or that employers are apt to pull back on other benefits.

About 3 years ago, in one of our hearings, since this had been made as a major argument against the bill, I

asked in front of all of the various business organizations that were present at the hearing if they would identify for me—and this was a dangerous question to ask, because I did not know the answer—I said: Will you identify for me the one single employer in the country who, as a result of adopting a family medical leave plan, has taken back some of the benefits that they were otherwise providing?

It was a stupid question to ask, because the minute I got it out of my mouth I presumed there might have been one. That was 3 years ago, and I reiterated the question every year. I have yet to receive a single example of a single business in the United States that decided to put in a family and medical leave plan but felt that because they did that they had to take back some of the benefits they were offering to their employees. And despite 3 years of asking the question, of saying just name one for me, not in a single instance or a single example have benefits been retracted or removed, taken back, because of a family and medical leave policy being put in place.

Lastly, I would say on this point, the issue of whether or not women will be discriminated against, that is another argument here: Women do not get hired because of childbirth, obviously, and adoption, and single mothers raising families. This is apt to be an occurrence where women are going to be more adversely affected, positively affected, if this legislation is adopted, at least under the present demographic changes.

And yet studies that have been conducted in States where that same argument was made, where maternity leave must be required under disabilities, the argument was made in California, being one of the States, and there were three or four others, if you do that then women are going to be discriminated against in the hiring practices because employers are going to say if we have got to give them that then we are going to choose the man over the women in the hiring.

I am not going to make the case here because after the law was adopted more women were hired. But it is important for my colleagues to know that in those States that adopted mandatory maternity leave, the employment of women in those States actually went up. I am not going to argue it did so because the law was put into place but certainly you cannot make the argument that women were losing out in the job market because the law went into place.

So there is no evidence whatsoever, despite the fact that these arguments get made all the time, that women are going to lose job opportunities because of a mandated leave being required for those eligible employees in the country.

At any rate, Mr. President, as I said, there is a fundamental distinction here. This is the essence of this bill we are talking about. This is not an ancillary side question. It is a fundamental issue of whether or not you believe that what we are talking about here is a basic right for families to be able to take the time.

As I said, no one would disagree if someone argued that OSHA or labor laws be left up to the industries. That is different. This is different.

Mrs. KASSEBAUM addressed the Chair.

The PRESIDING OFFICER. The Senator from Kansas.

Mrs. KASSEBAUM. Mr. President, I would like to respond to some of the questions raised by the Senator from Connecticut. In saying that this amendment eliminates the mandate and creates some kind of loophole to escape having to offer family and medical leave, I would say that the amendment does not create a loophole. It applies only to employers that offer a cafeteria plan. And at that point, the cafeteria plan offered must include the mandated family and medical leave provisions under this bill. That would be the minimum that would have to be offered. So if indeed that is a concern, then I say that this amendment does not eliminate the mandate.

Second, because the argument was being made by the Senator from Connecticut that it is the fundamental standard of labor that is important, and not just a benefit, I would have to ask him why are we excluding from this legislation 50 percent of the employees in today's work force and some 90 percent of the employers?

I think if it is a fundamental standard that we are wishing to impose on the labor force, we obviously are leaving out a sizable portion of the work force.

Mr. DODD. Well, the Senator from Kansas is correct in that we are leaving out people. But, as I pointed out yesterday, there are other areas where we have threshold numbers in dealing with what would be considered basic rights, OSHA regulations, for instance, and a number of other areas where 15 and 25 employees are the threshold. So firms that have less than 25 or 15 are not covered is the one example.

Second, as a practical matter, in dealing with this legislation, we also recognize that more smaller employers probably deal with these issues than larger employers.

I am not going to argue on a question that in a perfect world we would have all of these laws apply to everybody if they hired themselves and did not hire anybody else. But, as a practical matter, we set arbitrary thresholds to take into account other considerations.

Mrs. KASSEBAUM. Perhaps we are picking and choosing here, as well. And I understand that.

But as the Senator just pointed out, you do make choices for one reason or another.

I was interested in seeing your chart, because if family and medical leave is really such a little cost, then I think that any employer with a cafeteria plan would be more than happy to offer it and it would be an option that an employee could take that would be at a very low cost to the employer. And I really think that, as a matter of fact, since it is such a little cost, it would only be an argument in favor of adding it on to the plan because it would make it that much more attractive.

Mr. DODD. Will my colleague yield on that point?

Mrs. KASSEBAUM. Yes.

Mr. DODD. The point of the chart is, just like in a cafeteria, you do not go in and order every item in the cafeteria. Those in the cafeteria plan you pick and choose. Why this is there is that the person who does choose family and medical leave because they need it is not allowed then to choose every other item. So they have to give up something else which is far more valuable in some ways, or at less as essential to them in terms of vacation and pensions and health care. So that they do not want to have to be in the position where they are saying I need that as a basic right, but let me see now, I have to give up other things which are also important. That is No. 1.

No. 2, employers do not want to put them in in many cases, as we understand it, because it has such a low value that the tradeoff is not valuable. That is the point of listing the values.

Mrs. KASSEBAUM. That seems sort of specious reasoning to me on the part of the employer; I am not implying on the part of the Senator from Connecticut. But it seems to me that what an employer does is provide an employee with a certain dollar amount to spend, say $1,000. The employee can then allocate the funds among the options available in the plan.

Just to ask something else, and now I am drawing on my own experience with my daughter who is a working mother. She had 3 weeks of paid leave from her place of employment when she had her first child. Under this bill, is my colleague at all concerned that an employer might say: We have been given a Federal mandate of 12 weeks of unpaid leave. And so, because of that mandate, we are going to drop the 3 weeks of paid leave that we have offered. Is there anything in this bill that would prevent an employer from doing that?

Mr. DODD. There is no incentive to do it because they get credit for it. Again, in States that have mandated leave, I do not know if we have any data that supports whether or not the paid leave was reduced. I know we have to count that. They get credit for it in terms of the overall time.

So I know of no evidence that indicates in those States that have adopted family and medical leave legislation where paid leave has fallen off.

I would presume, having made the offer of the question where any other benefit had been reduced, to a number of the organizations, the people I asked—it was Ms. Alvis. She was with the American Society for Personnel Administration. The question was, I asked her to cite for me a single business in this country that adopted a family and medical leave plan that has then reduced another benefit; I assume also paid leave.

Mrs. KASSEBAUM. I was just curious. It may be. I know it is also counted as part. I can also see an employer who, today, trying to cut costs, might say that they will abide by the mandate by eliminating the paid leave provision they currently provide.

That is why, under this amendment, an employee would if they still retain the ability to choose the 3 weeks of paid leave, if it was offered in the cafeteria plan. Therefore, employees could protect their paid leave benefits.

Mr. President, I yield such time as the Senator from Mississippi may wish.

The PRESIDING OFFICER. The Senator from Mississippi.

Mr. COCHRAN. Mr. President, I thank the distinguished Senator for yielding me time on this amendment.

I first want to congratulate Senator KASSEBAUM on offering this amendment as an alternative, or a supplementary provision to the bill, because it gets at a problem which many of us are troubled by with the Dodd bill language as it now stands before the Senate. The bill, as everybody knows by now who has been following the debate, provides for mandated, unpaid leave for family or medical reasons. Twelve weeks is the period, as I understand it, in the bill.

The Kassebaum amendment is attractive to me, because it applies to those employers who offer already a multiple benefit employee plan. There are many businesses in our society today who have been very responsive to the changing configuration of the workplace in America. More women are coming into the work force. More families with children who need care and attention during working hours are a part of the labor force now with both parents working. There are obligations for elderly family members in many households around the country.

These needs are very real; they are very important to American workers, and many employers—a growing number each year—are responding to these needs by providing multiple benefit plans. Some are calling these plans cafeteria plans. As you go through the cafeteria line you can select one or the other or a combination of benefits that are offered by the employer to the employee. This is very imaginative, and it is a very popular way to deal with these problems in the work force today.

What the Dodd bill says is we do not care what kinds of benefit plan you have. You have to provide this many weeks of unpaid leave on demand if you are an eligible employee. And they exempt some employees as being ineligible. Then of course they exempt a lot of businesses. If you employ fewer than 50 people you are exempt from the application of this law. And there are other provisions of the bill as well.

But the point of the Kassebaum amendment is if you provide benefits already that are just as generous as this unpaid leave mandate of the Dodd bill you are exempt. This bill does not apply to you. You are not the problem.

Why not adopt that amendment? Think about it. The manager of the bill is resisting this amendment. This amendment ought to be accepted. It would certainly improve the bill. I do not know whether it would get one or two more votes or 10 more votes or what the practical consequences would be, but this amendment makes sense. It encourages employers to continue to do what they are now doing already without the benefit of Government mandates. And that is they are providing day care facilities and benefits for employees; they are providing tuition assistance to go back to school, to upgrade skill levels; they are providing on-the-job training in many situations to try to give better opportunities to the employees and to make them better workers—more productive workers.

We now have the most productive work force in the world. That is a surprise to many, because they have been hearing how terrible American workers are in comparison with other industrialized countries' workers. That is just not true. Our workers produce more value per unit of time worked in the workplace in the United States than any other country in the world. Germany is now No. 2. Japan has fallen to third place.

The point is this: That is no accident. We are seeing workers taking advantage of the opportunity to become better at what they do—better training opportunities, more on-the-job experiences that are varied and stimulating and challenging.

I say, Mr. President, it is another reason why we should give credit to the economic system in this country for doing a lot of things right today, bringing us to the point where we have the strongest economy in the world. If you compare our situation to many of the European countries where they have this kind of government regulation and mandated kind of benefit offering, you will find out why they have problems that they have now that we do not have. Many countries in the world are changing their systems to be more like us. Now we are finding we are very successful in many ways and now we are trying to change ours to be more like the more unsuccessful economies of the world. That part does not make sense to me.

But back to the Kassebaum amendment, let me just make a couple of other points. It provides a protection to the right of choice for workers. If the worker wants to continue to enjoy a variety of benefit offerings, this bill will not penalize that employer who offers that kind of plan. If there is paid leave being now offered—and in many cases that is the situation—for the same family and medical reasons, the employer would not have to worry about reducing the amount of the paid leave in order to make available the more generous, in terms of time-off in an unpaid status. That is a practical consequence that could result with the passage of this bill if the Kassebaum amendment is not agreed to. You could actually be reducing and cutting back by law as a practical matter the benefit plans that are available to many workers today.

That is not doing something for somebody. That is doing something to somebody. So let us take a look at the practical consequences. I am hoping that as Senators will review the Kassebaum amendment they will see it as one of protection of choice, protection of flexibility in the workplace, rewarding and encouraging more businesses to be more generous with benefit plans of the multiple choice variety rather than waiting, sitting back, and making Government tell you what you have to do. That is not the way to do it. That is not the way American business has been operating lately. And it ought to be congratulated. For those who are doing the right thing, they ought not to be penalized by a bill like this and neither should their employees. I hope the Senate will adopt the Kassebaum amendment.

The PRESIDING OFFICER. Who yields time?

Mrs. KASSEBAUM. Mr. President, I would just like to say I very much appreciate the comments of the Senator from Mississippi, particularly for his stressing the commonsense approach that I think this amendment takes by encouraging businesses and employees to do what works best for them. In no way is it designed to undercut family and medical leave. It is designed in many ways to strengthen it, and with as little costs as has been projected by the Senator from Connecticut with the chart, it would seem to me it would be an option that everyone would choose that would mean very little taken away from other benefits, if indeed that is the case.

But, again, it is the choice and the opportunity that both employers and employees would have in working out together what serves their purpose best. I very much appreciate the comments of Senator COCHRAN.

The PRESIDING OFFICER. Who yields time? The Senator from Connecticut.

Mr. DODD. Mr. President, we have a vote that will occur at 2 p.m. I will just

point out a Buck Consultants study done of businesses in the country as to whether or not they would ever move to family and medical leave legislation. I often stated I would not be standing here introducing the bill if this would happen. There would be no reason for it. The Buck Consultants' studies of businesses indicated that some 62 percent of the businesses said they would never get involved in family and medical leave legislation unless they were required to by State or Federal law. Studies and surveys are obviously vulnerable to attack.

I think it is interesting to note, given the fact this issue has had a relatively high profile over the last 5 or 6 years as we have debated it some four different times in committee, debated it in the Halls of Congress on two different occasions and passed it, the fact it has been the subject of two Presidential vetoes is not exactly a surprise issue, and yet during all of that time, the numbers of businesses that provide leave for adoption, for sick children, for new births, for sick parents have basically stayed the same. In fact, they are very, very low. Sixty-three percent of women do not receive maternity leave in firms that employ more than 100 people. Only about 14 percent I think have leave for sick children; 18 percent for elder care leave. These numbers have not moved at all.

What my colleague from Mississippi, who now unfortunately has left the floor, and others are advocating is leave this up to the marketplace; this is going to happen out there. I wish they were right. If they were, I would not offer a bill. But with only 14 percent that provide leave, God forbid your child is in an emergency room or intensive care unit. That is not progress. Only 37 percent of women who work for firms who employ more than 100 people received maternity leave in 1992, with women as single heads of household. Today there are a million women in this country in the work force who have children under the age of 1 out there with crises that are occurring everyday. And yet 14, 18 percent, whatever it is, get leave if something happens to that child. I am not talking about a cold or cough now. I am talking about a serious medical condition where three physicians will certify that that parent should be with that child.

So I hear over and over this wave of argument: Stay out of this area, it will happen. I am sure if we went back and reviewed the debates on occupational safety and health, child labor laws, many of the same arguments were made: Let the private sector handle this, they will eventually stop hiring kids, they will eventually clean up the workplace. As I said yesterday, many did. Those laws actually ended up affecting a relatively small percentage of employers because I believe most employers wanted safe workplaces and did so. Regrettably, today the statistics on family and medical leave are not good at all.

So I would like to take some comfort in the fact that eventually this was going to happen, but after 7 years of a highly public debate, of requests being made of businesses to move into this area, of States doing some things in certain areas, we still find, regrettably, that there seems to be little or no movement on this issue.

So aside from the minimum labor standard feature of this, and the basic right—and for those who are watching or listening to this debate, this is a basic right. As my colleague from Kansas asked, if it is such a basic right, who do you exempt employers who employ less than 50 people? We do that across the board—the Americans with Disabilities Act, certain civil rights areas, in OSHA where we have numbers that exclude employees. We have done that under the Fair Labor Standards Act from the very beginning and across the board. That is a good question and I suppose, I said to my colleague, in a perfect world we would include everybody. But we understood in these other areas, as fundamental as they were, that that was difficult to achieve for the reasons we talked about earlier.

But this is a basic right. No Member in the Chamber of this body should have any illusion that what we are arguing for is as basic as your family. And what is more basic than your family? We are saying when that family is in trouble and you have to make a choice between your job and your family, we do not think you ought to lose your job or health care when you decide to be with your family. That is not basic. That is not some question that ought to be left on some cafeteria plan. That is as basic a problem as I know in this country. With the problems people face, they ought not to be placed in the position, when it happens to them, of making the choice between some other benefit, or the whim of the employer, but to be with that family. It is not only important for that child, it is not only important for that parent, it is important for that employer.

The countless—countless—testimony we received from employers who established these plans on their own, I wish that other people would have listened to them. My best witnesses were employers, my best ones, who stood up and said, "Senator, I don't know what people are talking about." You have one group of witnesses that says, "Senator, if you do this, this is what we think it will be like," and another group of witnesses from the business community saying, "Let me tell you what it is like to have a family and medical leave plan, and it works; it is good for us as employers; it is good for the business. We have much higher productivity. We have higher attention rates, lower absenteeism. It really makes a difference; it makes a difference." And yet somehow their evidence or their testimony was not given any additional weight than the person who said hypothetically, I think, this is going to create the problems people identified here.

I am convinced as one of our colleagues said yesterday, when this debate is over, we are going to look back and wonder what all the fuss was about. This is as common sense a piece of legislation, in my view, as we have had before us in some time. It is basic, fundamental, and human decency. To put it on a different level than that is to minimize the importance of this issue to so many families in this country today. It ought not to be put on that basis. It is a basic right to be with your family.

Mr. President, I do not know if I have any other speakers. I will inquire.

Mrs. KASSEBAUM. Mr. President, I yield time as may be needed to the Senator from Utah.

The PRESIDING OFFICER. The Senator from Kansas has 9 minutes and 20 seconds left. The Senator from Utah.

Mr. BENNETT. Mr. President, I rise once again to talk about my experience in dealing with these matters. I spoke yesterday about what we did in our company with respect to family leave. I would like to speak now about our experience with the cafeteria plan.

We instituted a cafeteria plan when it became obvious to us that the benefits that we offered to our employees did not meet the needs of every employee. And the one thing that hit us in our experience that I had not expected was that as soon as we gave the employees their choice of how they could use their benefit dollars, a fairly large number of the employees opted out of our medical insurance.

I thought that was the one thing that every American wanted. I discovered that many of these employees were women whose husbands had medical insurance where they were employed, and they did not want double coverage.

We said, "Here is the menu of benefits that you can have. Which would you prefer?" And many of the women said, "We do not want health insurance. We would prefer to take these dollars that are spent on health insurance and spend them on child care." And so our company was paying child care bills for the women who had young children who needed to be taken care of while they were at work. There were others who said, "We are covered by our husband's health insurance. We are past the childbearing age. We want to take all these benefit dollars and put them into our 401(k) plan," which the company would then match and it would add to their retirement. And we noticed that each employee used the flex bucks, as we called them, to make the decision as to what would be best for him or her.

I think Senator KASSEBAUM's amendment will allow employers who have adopted that kind of approach to proceed in the most beneficial and economic way.

I noticed in the private sector that as cafeteria plans became known, they became more and more popular. We thought we were breaking new ground. We were interested to see the number of companies that came to us and said, "We have done the same thing," because the old days when benefits are prescribed for everybody in every kind of circumstance, willy-nilly, everything has to be treated the same, are past. The work force has become so diverse, family situations have become so different that the cafeteria approach where the employee gets to choose is really the wave of the future.

I support the amendment of the Senator from Kansas because she has taken cognizance of the wave of the future. This bill, as I said yesterday, is a Federal mandate that will try to lock all employers into the same straitjacket. She has taken cognizance of the fact that this kind of legislation must be brought up to date and be made compatible with the wave of the future instead of following the patterns of firm mandates that we have had in the past.

I think I speak for most employers who are trying to look to the future to take care of our work force in a way that is progressive, that is innovative, that is creative in saying that support for the amendment of Senator KASSEBAUM would be by far the most logical thing for us to do at this point in the debate.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. DODD. Mr. President, I yield 5 minutes to the distinguished Senator from Missouri.

The PRESIDING OFFICER. The Senator from Missouri.

Mr. BOND. Mr. President, I thank my friend from Connecticut. I rise to reject the contention of this amendment that family and medical leave is a benefit like other fringe benefits that must be negotiated between employer and employee.

I also reject the notion that the provision of family leave is some sort of tradeoff with benefits like health care coverage or a paid vacation. The people taking leave under our bill have no other choice. We strengthened the standard to the point where the abuse of leave would be extremely difficult, if not impossible. Rare is the person in this day and age who can afford to take unpaid leave except under the most serious conditions.

So the question really becomes, the question that I ask my colleagues to focus on, should an employee who is forced to take unpaid time off for the birth of a child, arrival of a child, or to care for a sick child, a parent who is ill and elderly, or a spouse who has been in a car accident, have to choose between their job and the family? To me that answer should be no.

Second, unpaid family and medical leave costs businesses less than $10 per covered worker per year. It may be $6; it may be $9; it may be $9.50, but it is not a significant cost. We have already discussed how the so-called costs are certainly less than the cost to a business of hiring and training a new worker. The average cost, on the other hand, of a health care policy is over $3,000 a year. And a total benefits package costs in excess of $10,000 per year. Family leave costs a very small fraction of paid vacation and sick leave policies and, frankly, it is not something that most people would think about unless they are planning to expand their family. How do they know the illness is going to strike? How do they know that they are going to be required to care for that ill and aging parent or for the very sick child or for the victim of a car accident?

Family leave is far less than the cost of a parking benefit or a subsidized cafeteria. So the notion that employer provision of family leave will somehow result in a tradeoff of other benefits, to me, just does not hold water. Families need this basic job protection. In my State of Missouri, over 50,000 families a year could benefit from this protection, men and women who will experience the birth of a child or whose parents will become very ill or who may become ill themselves. These Missourians who face times of great family need should not have to choose between being with the family, being with the sick child or the aging parent, and losing the job which pays the bills for the family.

I am committed to establishing the basic job protection of family leave because I believe it is crucial to the preservation of our families, to ensuring that family responsibility once again becomes a priority in this country. Family preservation is crucial to the long-term economic health of our Nation. So many times we have heard it said that the basis for strong communities is strong families, the basis for strong States, the basis for strong nations is strong families. By enacting this basic protection, we are not trading off for the paid vacation or subsidized parking; we are assuring that a family which faces a very real family crisis has the ability to respond and exercise family relationships and responsibilities without forfeiting the economic wherewithal vitally important to the family's future.

I urge my colleagues not to support this amendment.

The PRESIDING OFFICER. Who yields time?

The Senator from Kansas has 5 minutes and 20 seconds remaining. The Senator from Connecticut has 6 minutes and 15 seconds.

Mrs. KASSEBAUM. Mr. President, I reserve the remainder of my time and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. DODD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DODD. Mr. President, I ask unanimous consent that the time under the quorum call be counted against both sides.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DODD. I note the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. DODD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. THURMOND. Mr. President, I rise today in opposition of S. 5, the Family and Medical Leave Act of 1993. Over the past few years, the Congress has debated various proposals which would mandate employers to provide several weeks of family leave for an employee to care for a child, spouse, or parent who is ill. While family leave is desirable and should be encouraged, I continue to question whether a Federal mandate in this area fully takes into account the varying needs and circumstances of employers and employees.

I am concerned that this legislation could hamper the ability of employees to freely choose benefits. With the help of computers, employers can provide a wide variety of benefits. The easy access and storage of various plans, provided by computers, allows the flexibility employees need to choose the benefits that best fit their individual needs.

I believe the choices of how to best utilize these benefits is best left to the employee. Compelling an employer to provide a particular benefit will not necessarily enlarge the number of available benefits. I am concerned that employers will only offer the benefits provided for in this bill and may be inflexible to the needs of a diverse work force.

Mr. President, we cannot reduce overall employee benefits. We need to make every effort to encourage and support employers to add family and medical leave to the benefits they provide their employees.

This is the first time Congress will be mandating employee benefits. I am concerned that this precedence will lead the Government into a role of micromanaging these issues. I believe such issues are best left to the private

sector and employer-employee relations.

Mr. President, the proponents of this legislation frequently remind us that many European countries have laws similar to S. 5. What these proponents omit is that these laws have contributed to a stagnate economy and unemployment. As our economy attempts a recovery, it would seem unwise to reduce the choice and flexibility available to employers and employees.

Mr. President, I strongly support the idea of family and medical leave. However, I do not believe a Federal mandate is the best course of action.

Mr. DODD. Mr. President, parliamentary inquiry. Under the previous unanimous-consent agreement, I believe the hour of 2 p.m. has arrived, and we are ready to vote; is that correct?

The PRESIDING OFFICER. The Senator is correct.

Mr. DODD. Mr. President, I move to table the Kassebaum amendment and ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second. The question is on a motion to table the Kassebaum amendment.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. SIMPSON. I announce that the Senator from Minnesota [Mr. DURENBERGER] is necessarily absent.

The PRESIDING OFFICER (Mr. ROBB). Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 63, nays 36, as follows:

[Rollcall Vote No. 4 Leg.]

YEAS—63

Akaka	Exon	Mathews
Baucus	Feingold	Metzenbaum
Biden	Feinstein	Mikulski
Bingaman	Ford	Mitchell
Bond	Glenn	Moseley-Braun
Boren	Graham	Moynihan
Boxer	Harkin	Murray
Bradley	Heflin	Nunn
Breaux	Hollings	Packwood
Bryan	Inouye	Pell
Bumpers	Jeffords	Pryor
Byrd	Johnston	Reid
Chafee	Kennedy	Riegle
Coats	Kerrey	Robb
Cohen	Kerry	Rockefeller
Conrad	Kohl	Roth
Danforth	Krueger	Sarbanes
Daschle	Lautenberg	Sasser
DeConcini	Leahy	Simon
Dodd	Levin	Wellstone
Dorgan	Lieberman	Wofford

NAYS—36

Bennett	Gramm	McConnell
Brown	Grassley	Murkowski
Burns	Gregg	Nickles
Campbell	Hatch	Pressler
Cochran	Hatfield	Shelby
Coverdell	Helms	Simpson
Craig	Kassebaum	Smith
D'Amato	Kempthorne	Specter
Dole	Lott	Stevens
Domenici	Lugar	Thurmond
Faircloth	Mack	Wallop
Gorton	McCain	Warner

NOT VOTING—1

Durenberger

So the motion to table the amendment (No. 11) was agreed to.

Mr. DODD. Mr. President, I move to reconsider the vote.

Mr. DECONCINI. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The Senator from Arizona, Senator DECONCINI.

Mr. DECONCINI. Mr. President, I rise today to join the Senator from Connecticut and the other distinguished cosponsors to once again support this very important legislation. The Senator from Connecticut, Senator DODD, has labored on the family medical leave bill for years. The time has finally come to pass this important measure for the families of the United States.

This will be the second time in recent months that the Congress will send a bill to the White House that will provide working families with some job protection by providing 12 weeks of unpaid leave for employees after the birth or adoption of a child, or to care for an immediate family member who is seriously ill.

With the swearing in of a President who has confirmed his support of family leave legislation, the time has finally come where this bill will be enacted into law.

Although I have always been a strong supporter of family leave, I would suggest that this legislation is even more important now than it was when it was first introduced in 1985. Figures from the 1990 census show that 10.1 million families were headed by single parents.

The high cost of living has forced many families to generate two incomes in order to keep their heads above water. It is projected that by the year 2000, 3 out of 4 American children will have mothers in the workplace.

Mr. President, working parents should not have to choose between a job they cannot afford to lose and a newborn child or a family member who needs them. Only 18 percent of employers provide leave for parents to care for a sick child, and less than half of working women have maternity leave. We can send a very strong message of support to the working parents of this country by enacting this legislation—a message that says we care about protecting their jobs and their economic security without forcing them to compromise their family responsibilities.

We have all heard the arguments against this legislation. Representing a State with an economy that depends on small businesses, I can appreciate the concerns that mandated family leave would be devastating to small business owners. And, as the result, this bill provides for an exemption for businesses with less than 50 employees. This exemption will cover more than 95 percent of all employers.

It also allows an employer some flexibility to substitute accrued paid leave for any part of the 12-week period, and it allows them to recapture health insurance premiums if the employee does not return to work.

So the legislation here is thoughtful, and concerned about small business and what they have to take on if they happen to be slightly over the small business exemption.

While many industrialized nations provide their workers with some form of family leave, most of them do so with compensation. Workers in Japan or in Germany, for instance, our toughest trade competitors, get 14 weeks of leave with pay. The family and medical leave bill provides up to 12 weeks of unpaid leave—unpaid leave—for the birth or adoption of a child, or an illness in the family.

That is not a huge burden. Rather, it is security that the job will be there after you have handled this family emergency, whether it is an adoption or giving birth to a child, or caring for a sick relative.

A General Accounting Office report estimates that the annual cost for providing unpaid family leave is $5.30 per eligible employee. These costs are incurred primarily through the continuation of health insurance benefits for employment on unpaid leave. That seems a very small price to pay for the immense impact that time can have on the family being able to bond with a newborn child, or to struggle through a serious family illness that is traumatic in many, many respects.

President Clinton has pledged his support in preserving family values by vowing to sign this bill into law. The President realizes the needs of the changing American family to stay home during the first 12 weeks of a child's life or take care of a sick family member without the fear of becoming unemployed.

Children today are fighting against tremendous odds. The high risk of teen pregnancy, gang violence, drug and alcohol abuse are part of the world in which young people have to live on a day-to-day basis. The least we can do is give them the first 12 weeks of their lives with their parents.

It is no guarantee that they will avoid these threats to their well-being, but it is a good start.

I urge my colleagues to pass this bill today so we might be able to proceed, holding our heads high as a nation because we have decided to put families first, and we understand the needs of working families, and we understand the need that family values start by providing working parents time to be with a child when it is born, is adopted, or if there is a serious illness.

I thank the Senator from Connecticut.

UNANIMOUS-CONSENT AGREEMENT

Mr. DODD. Mr. President, I understand the Senator from Wyoming is about to offer an amendment.

I ask unanimous consent that Senator WALLOP be recognized to offer an

amendment, with the time until 3:15 p.m. divided as follows: 30 minutes for the Senator from Wyoming and the remainder of the time to myself on the amendment; that no other amendments or motions, other than a motion to table, be in order prior to the disposition of the Wallop amendment and that at 3:15, the Senate vote on or in relation to Senator WALLOP's amendment. I will say to my colleague from Wyoming, if he needs additional time, I will see that he gets that time.

The PRESIDING OFFICER. Is there objection?

Mr. WALLOP. Reserving the right to object, and I shall not object, I told the Senator from Connecticut this is not his problem, but the reason for which this unanimous-consent agreement is sought is not to speed up time but to limit amendments. I thought I heard the Republican leader give his commitment to the Democratic leader yesterday that no second-degree amendments would be offered and that they would be given a full heads up on any amendments offered. This amounts to the statement on behalf of the majority leader that he does not trust that commitment. I resent it, but I will not object to it.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Under the unanimous-consent request just agreed to, the Chair recognizes the Senator from Wyoming for the purpose of offering an amendment.

AMENDMENT NO. 12

(Purpose: To amend the Fair Labor Standards Act of 1938 to permit an employee to take compensatory time off in lieu of compensation for overtime hours)

Mr. WALLOP. Mr. President, I send an amendment to the desk and ask that it be stated.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Wyoming [Mr. WALLOP], for himself, Mr. DOLE and Mr. SIMPSON, proposes an amendment numbered 12.

Mr. WALLOP. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the end of the bill add the following:

SECTION 1. PERMITTING COMPENSATORY TIME OFF.

Section 7(o) of the Fair Labor Standards Act of 1938 (29 U.S.C. 207(o)) is amended—

(1) by redesignating paragraph (6) as paragraph (7); and

(2) by inserting after paragraph (5), the following new paragraph:

"(6) With respect to employees not covered under paragraph (1), an employer may not be deemed to have violated subsection (a) by employing any employee for a workweek in excess of the maximum workweek applicable to such employee under subsection (a) if, pursuant to a contract made between the employer and the employee individually, or an agreement made as a result of collective bargaining by representatives of employees entered into prior to the performance of the work, the employer at a written request of the employee grants the employee compensatory time off with pay in a subsequent workweek in lieu of payment of the number of hours worked in such current workweek in excess of the maximum workweek applicable to such employee under subsection (a). For purposes of determining the maximum workweek applicable to such employee under subsection (a), and the rate of pay due to the employee, compensatory time used by the employee shall be considered hours actually worked during the subsequent workweek in which actually used.".

Mr. WALLOP. Mr. President, I yield myself such time as I may consume.

Mr. DODD. Will my colleague yield just for a point? I do not think it is a question of the majority leader not trusting the Republican leader at all. I know he does trust him. I think there was a concern, as things can happen sometimes, of someone showing up, gets a second-degree amendment in, despite the good efforts of the Republican leader. Sometimes that does happen. I do not think it has anything to do with trust. I make that point.

Mr. WALLOP. Mr. President, I would argue that, but I have an amendment to argue.

Mr. President, the Senate majority and some in the minority have expressed themselves as being willing to mandate certain employment requirements on American business. I am not here to argue whether that is the right thing or wrong thing to do. My position on it is well known. But as this bill has come up before, I have offered this amendment before and received promises from the able majority leader and others that this was an amendment whose purposes were totally legitimate. So while here we are willing to mandate on businesses certain employment practices, we are, I will guarantee you, about to deny employees of America their right to petition their employer for flexible leave time for their family. And I say to the Democrats who are so anxious to push this, and I say to those who say that the purpose of this legislation is to make the workplace more family friendly, that one of the ways to make it more family friendly would be to listen to the families and their requests.

The amendment that I am offering would allow private sector employees to choose a flexible work schedule if they desire and if they can persuade their employer. The issue is whether compensatory time can be used by the hourly wage employees of a business. Under the Fair Labor Standards Act, if an hourly wage employee works more than 40 hours per week, then the only way to compensate that employee is through the overtime pay requirement. The use of alternative compensatory time off policy is now prohibited.

The amendment I offer would provide useful labor law reform as it would allow employers and employees to voluntarily enter into contracts to use a compensatory-time format as an alternative to the overtime requirement. Employees would be able to earn paid leave, unlike the requirements of this bill, as a result of overtime work. This is similar to the compensatory-time procedure that is now available to many salaried employees, as well as to employees of State and local governments.

Mr. President, the need for this measure was brought to my attention by the employees of a private employer in my home State, but fellow colleagues may be most familiar with the issue when it first became a problem to State and local governments performing what was called traditional functions. That was in 1985 when the U.S. Supreme Court decided in Garcia versus San Antonio METRO to overturn the law of the land which up until then had been that State and local employees engaged in traditional public responsibilities would not be covered by Federal labor law. Public employees engaged in nontraditional activities had always been covered by the Federal labor law.

Many Senators objected to the Garcia decision because of the worry that compensatory time agreements involving firemen, law enforcement officials, and road maintenance crews would be affected. Due to the long shifts that those employees work, they typically receive compensatory time off to reimburse them for their work schedules.

Congress then acted swiftly to reinstate compensatory-time agreements in the public sector because of what it called great burdens on the State and local government. It made good sense for public employees and it is equally wise to allow private businesses, but more important, the employees of private businesses the opportunity to earn a stable wage throughout the year, despite the erratic annual production of hours of business. We should treat the private sector with the same fairness that we do the public sector. It would be good for employees and good for employers.

It would also be good for the economy, because without this measure, there is a fluctuation in business, in production schedules. Employees have to be laid off in slow periods, forcing them either to deplete their savings or to apply for unemployment benefits, forcing them to seek unemployment compensation and increase the cost not only to the States but to the employers who would have to pay the higher unemployment taxes. Allowing employees to petition their employer to choose a stable wage throughout the year would prevent these unfortunate consequences.

So, Mr. President, because this bill allows for flexible schedules not only on a seasonal basis but on a week-to-

week basis as well, it should prove especially beneficial to working mothers who have a real need for a flexible time plan. The women in this particular plan wanted to work their extra hours in the week so that they could spend more time with their children, and here we are saying the workplace has to be family friendly, denying families the very objective that they have of trying to spend more time with their children and avoid as much of the latchkey world as they possibly can.

Women, it was said by the Senator from Arizona, currently comprise more than 45 percent of the U.S. labor force. As predicted by the end of this decade, 2 out of 3 new work force entrants will be women. The Bureau of Labor Statistics indicates 56 percent of mothers with children under age 6 and 50 percent of mothers with children under age 1 work outside the home. Why is it that this Senate and this Congress, talking about making the workplace more family friendly, will be unwilling to allow these mothers, these employees, that time, structured with their employer, to care for their family?

There is a need for flexibility to meet the unique needs of this very important sector of America's work force, and my amendment would provide just that.

Under the amendment, Mr. President, they would have the option to enter into an agreement with their employer to work longer each day in order to take off time to spend with their children during school vacations, for example. Importantly, business would not be penalized for allowing such flexibility to its working mothers.

Mr. President, it is important to point out that under this amendment, employees would be able to take compensatory time off in lieu of monetary compensation for overtime hours if, and only if, they are to make such a request in writing and if they either enter into a contract with their employer as an individual or if an agreement is made as the result of collective bargaining.

Why we would be frightened of collective bargaining agreements that would provide this flexibility, why we would be frightened of individual agreements that provide this flexibility when the stated hypocrisy of this bill is that we are trying to make employment circumstances more family friendly, I just do not understand, Mr. President. I do not understand why it would be opposed. I was assured by the majority leader in 1989 that this was an idea of great merit and that the Senate would study it. It has done nothing of the kind, and it is time that the working people of America, speaking through their Representatives, are heard and that this opportunity becomes theirs just as it is for public employees.

I am hopeful that the committee will find it in its heart to suggest that this is part and parcel of what they are otherwise trying to do with the family leave bill, to make working conditions for families better. And when families petition for it, where their Representatives bargain for it, who are we in this Congress to say they should not allow it?

I have not understood it since 1985, Mr. President, and I doubt that I will understand it today, but I ask this Senate to consider carefully what it is doing in the name of making the workplace family friendly. I ask them to consider why people who petition for this privilege should not be allowed that choice. Are we so frightened of what Americans will do in their own behalf that we cannot allow it? Are we willing to mandate the terms of employment on employers yet ignore the pleas of employees to have a separate work schedule that suits what their family does? Why would we be frightened to permit that? I hope the answer is forthcoming that we will not be.

I reserve the remainder of my time.

The PRESIDING OFFICER. Who yields time?

Mr. DODD. Mr. President, I yield 7 minutes to the Senator from Massachusetts.

The PRESIDING OFFICER. The Senator from Massachusetts [Mr. KENNEDY] is recognized for up to 7 minutes.

Mr. KENNEDY. Mr. President, I have listened to the arguments of my friend from Wyoming. I find it difficult to relate his particular amendment to the issue that is before us, because the issue that is before us is the family and medical leave issue. That is what we have been debating. That is what we have been focusing on.

The Senator from Wyoming is talking about bringing about a very dramatic change in the Fair Labor Standards Act, which really is not the issue that is before us, nor is it an issue that was raised in the many hearings we had on the family and medical leave issue over the last 7 years. Nor is it an issue, I say quite frankly as the chairman of the Human Resources Committee, on which we have been hearing from workers themselves.

I have heard a great deal about how the workers of America really are waiting for this kind of amendment to be put into effect. Well, I would say the silence is deafening, because I know of no such petition; I know of no such correspondence; I know of no such letters; I know of no such phone calls to our committee saying look, while you are going ahead on the family and medical leave, will you please also go ahead and change the Fair Labor Standards Act to eliminate the requirement for overtime pay. None.

Maybe I will be corrected, but I am also not aware of any employers having raised this particular issue when the debate on the family and medical leave bill was taking place, and we were trying to make changes to address concerns expressed by the employer communities. I do not know that they have been knocking on the doors of the members of the committee.

Quite frankly, I also do not see any evidence that over the 55-year period of time the Fair Labor Standards Act has been in effect, the overtime requirements have been such a major problem. I know this issue is of concern to the Senator from Wyoming, but maybe there are others of our colleagues who are hearing from workers and business leaders in their States that these overtime requirements are a problem back home, but I have certainly not heard about it.

Mr. President, first of all, to set the record straight, if employers want to adjust and provide some flexible work schedule for employees within the 40-hour week, they already have the ability to do that. Within a 40-hour week, if an employer wants to allow an employee to work 10 hours a day for 4 days and take Fridays off, for example. He can go ahead and do it and pay the employee the same as if the employee worked 8 hours a day for 5 days. They can go ahead and do it now.

My good friend from Wyoming says, well, beyond that 40 hours if an employee wants to work 60 hours a week, and 20 hours the next week, he ought to be able to do that without the employer having to pay overtime for that extra 20 hours over 40 hours in the first week. The Senator from Wyoming may want to go back to the time when many employers in this country were requiring employees to work 60, 70 hours a week. Those were the working conditions prior to the time of the Fair Labor Standards Act. But when Congress passed the Fair Labor Standards Act it was agreed in that legislation to encourage adherence to the national norm of a 40-hour workweek, we would require employers to pay overtime for hours over 40 hours a week and we would not permit individual employees to waive their rights on the issues of overtime. The issue was debated and discussed and here in the United States as in the other major industrial nations of the world we have settled on a 40-hour week. If the employer wants additional time from the employee that week, they are going to have to pay the employee time and a half. We made a policy decision that working 40 hours a week, 8 hours a day, 5 days a week ought to be considered a full week's work, and that employees should be able to do a full weeks' work and still be able to spend time on the weekend with their children and time on Sunday in expressing their religious beliefs of expressing their family ties.

Many workers have to work other jobs because of the economic challenges they face. But what we are saying is 40 hours a week is a full week's work.

The Senator says, well, let us let employees waive their right to overtime if they want to. Do we permit the workers to say all right, we will waive our right to be paid at least the minimum wage? If a worker needs a job so bad that he says you don't have to pay me $4.25 an hour, I will work for $2 an hour, do we say that's fine, let's waive the minimum wage and let the employee pay $2 so we can give these workers a chance to work? Do we say its fine with us if a worker wants to waive the right to conditions in the workplace? Do we say that if the worker wants to waive the right to unemployment compensation its okay with us if the employer doesn't pay unemployment taxes? Why not leave this all up to the employer and the employee and let them negotiate between themselves to decide whether the employee will get minimum wage, or a safe workplace, or unemployment insurance coverage?

We have had these debates and discussions in this country, and what we basically have recognized is that when an individual employee who needs to be able to keep his job in dealing with the employees on issues like this, there is inherently an imbalance in the relative power situation, and with so much power on the side of the employer it is hard for the employee to say no to what the employer wants. It was decided as a matter of public policy that on these very basic and fundamental issues of child labor, worker safety, minimum wage, we would not leave it up to the "market" or individual bargaining between the employee and the employer to determine the outcome, but we would set a minimum standard for all employers to comply with. I am talking about a minimum wage, by the way, that was supposed to say that if someone is going to work 40 hours a week, 52 weeks of the year, they are going to be guaranteed a sufficient income enabling them to support their family in the United States of America.

There is a bold, radical concept for you. There is a really bold, radical concept. And of course that is a "mandate." My goodness. The minimum wage has been embraced by Republicans and Democrats up until fairly recently in the previous administration, which did not want to raise the minimum wage to reflect the increase in the Consumer Price Index.

So now we have a situation in which there are hundreds of thousands of employees in this country who are working 40 hours a week and still in poverty, and the taxpayers are picking up the difference. They are subsidizing those employers, because those individuals who work full-time and are still in poverty are eligible for safety net programs. Their employers are basically bilking the American taxpayers because they are not willing to provide a living wage for their workers.

So, Mr. President, first of all, the overtime issue addressed in the Senators amendment is not an issue on which we have been focusing because it is basically unrelated to the issue at hand. Secondly, there have been times in the past where we have debated the issue of waiving various workplace standards such as the minimum wage, workplace safety and health, the child labor laws. Why not waive the child labor laws and go ahead and put those children back to work, those 12- and 13-year-olds who used to work in the plants up in Lowell and Lawrence and in the mills of my own State. The fact is that I think we have moved beyond the point that we would seriously consider that. I think the issue in terms of flexible time is enormously important as an issue. We have found many enlightened employers and employees working through various adjustments and agreements. It is a particularly important kind of issue where both members of the family are working.

But Mr. President, there just does not seem to be the demand for the kind of change the Senator is proposing, certainly not from the employees. They have not been demanding it. I do not believe as the chairman of the Labor and Human Resources Committee that employers are demanding it. I support finding ways for flexible time to be provided, particularly where two members of the family work, but within the protections which have been established by the Fair Labor Standards Act. These protections are working. They are working effectively. And there is no question that this amendment really is not related to the subject at hand.

I hope it will not be accepted.

The PRESIDING OFFICER. Who yields time?

Mr. WALLOP. Mr. President, what is the time situation?

The PRESIDING OFFICER. The Senator from Wyoming controls an additional 13 minutes 32 seconds.

Mr. WALLOP. I yield myself 7 minutes.

Mr. President, I am always entertained by entering into a debate with the Senator from Massachusetts. His frequent want is to substitute decibels for logic. I certainly heard him. I heard him say exactly the same thing in 1989. I have introduced this legislation since 1982. I have been promised by his committee over the course of that time that there would be hearings on it and we would move toward it.

Mr. KENNEDY. Will the Senator yield?

Mr. WALLOP. Not yet. I will in a second.

Mr. President, who controls the floor?

The PRESIDING OFFICER. The Senator from Wyoming controls the floor.

Mr. WALLOP. I will yield to the Senator in a minute. I would like to finish my statement on this.

The able majority leader promised me in 1989 that this had a great deal of merit. I just quote him. "There is no doubt in my mind that there are circumstances under which the flexibility he suggests is appropriate, and indeed in the best interests of the employee."

This is not a new issue to the Senate. It is an issue which they do not wish to confront.

The Senator from Massachusetts talks about my going off the topic. I did not say anything about abandoning the minimum wage. Did the Senate hear me say we were going to abandon the minimum wage or child labor laws? Did the Senate hear me say we had no concern for safety? No.

Mr. President, what the Senator from Wyoming is seeking to do is to allow employees who work in the modern workplace—in the era in which modern labor takes place; where lots of work is seasonal; where some people would like to make an arrangement to be paid all year long so that their income is steady, predictable; where there are certain times in which they would like to work more so that they could have time off to spend with their family; not to abandon child labor laws, not to abandon safety laws, not to abandon minimum wage—to deal uprightly with their employer. They must, if the Senator would take time to read this amendment, petition for this. It is not something that is going to be or can be forced on them. It is something that must be petitioned.

I could read from April 12, 1989, precisely the speech you just heard. We have not yet come to the realization, Mr. President, that this is a modern-era workplace which has changed substantially from the thirties, the fifties, and other times when those labor laws were put into place.

There are people who have petitioned us for the flexibility to work out things with their employer in ways which are of satisfaction to them both. Not every American wants time-and-a-half; some would rather spend time with his or her children and family.

I do not understand what makes the Congress of the United States think that the working people of America are not able to petition for their own goals and purposes in life? Who are we to substitute our judgment for those of working men and women in America who want to spend some time in a different way than the Congress has stipulated?

They are not asking to be let free from safety laws, OSHA, or child labor laws. They are asking, and this amendment says, they must petition their employer. It is not being run down their throat.

Mr. President, it is time we dealt honestly with the working men and women of American and treated them as though they had some level of maturity and that acting as adults they

could, with their employer, decide that was best for them.

Are there employment abuses in America? Of course there are. Will there be after this bill passes? Of course there will be. Will there be if this amendment were to pass? Of course. But the great vast majority of working men and women and employers in America have found the way to live with each other. The only thing that enters into that process that really binds them is an act passed in another era. Congress should have brains enough, ears enough, heart enough to understand that this is a different time and that different things could make life in the workplace much more agreeable, and that American employees are adult enough and mature enough to be able to make that decision in their own behalf.

Mr. President, I reserve the remainder of my time.

Mr. KENNEDY addressed the Chair.

The PRESIDING OFFICER. Who yields time?

Mr. DODD. I yield 2 minutes to the Senator from Massachusetts [Mr. KENNEDY].

Mr. KENNEDY. Mr. President, the Senator leaves out some very basic and fundamental facts relating to the current law under the Fair Labor Standards Act. In order to permit the kind of flexibility to exceed 40 hours a week that the Senator is talking about, we would effectively be removing the norm the 40-hour workweek from the Fair Labor Standards Act.

Let us understand the facts. Within 40 hours a week, an employer and employee already have flexibility on hours. The employee can work 12 hours one day and just 4 hours the rest of the employee's regular rate of pay, and that's not an issue with the FLSA. Above 40 hours a week, an employer can make any employee work 50, 60, or 70 hours but they have to pay time and a half.

The Senator from Wyoming has given us this wonderful explanation that his amendment is something to benefit workers, that workers are asking for. There are 120 million workers in the work force, Senator. Show me the letters you have received from workers asking for this kind of change. They are not. Why do you think that you know better what workers really want? My experience is that working men and women generally want a 40-hour work week. They want to work 8 hours a day, 40 hours a week. And they want to get paid time and a half if they are going to have to work over 40 hours a week.

If the employer wants to make a worker work 50, 60, or 70 hours, he can do that under the law. But he has to pay that worker time and a half for those overtime hours. This acts as an economic disincentive to discourage employers from requiring employees to work excessive hours. This is an important worker protection which workers in the early part of the century struggled for—the right to limit work time to 40 hours a week, 8 hours a day.

I say with all respect to the Senator that I am amazed by the representations of the Senator from Wyoming, that his amendment represents something that workers all over the country are petitioning for. They are not. Workers basically support the Fair Labor Standards Act overtime requirements because they struggled to obtain these protections over a long period of time.

Mr. President, I just do not see why we at this time ought to be altering and changing by legislation what has been a carefully protected right for workers in our society.

The PRESIDING OFFICER. Who yields time?

Mr. DODD. Mr. President, how much time remains?

The PRESIDING OFFICER. The Senator controls 3 minutes 12 seconds.

Mr. DODD. Mr. President, I yield 2 minutes to the Senator from Ohio.

Mr. WALLOP. Mr. President, I inquire again if that is the correct apportionment of the time. It seems as though the Senator from Connecticut might have had more than that.

The PRESIDING OFFICER (Mr. HARKIN). The original agreement apportioned 30 minutes to the Senator from Wyoming, and the remainder was 14 minutes to the Senator from Connecticut; and the Senator from Connecticut, or his designees, have used all but 3 minutes and 12 seconds.

The Senator from Ohio is recognized up to 2 minutes.

Mr. METZENBAUM. Mr. President, I came to the floor to oppose this amendment because, first of all, the amendment itself does not have merit, as I see it. This idea of substituting comp—compensatory time—for the amount of money that an individual is entitled to is not a rational approach to the whole question of management-labor relations.

Beyond that, and far more important, as I see it, is the fact that this amendment does not belong on this bill. It has no relevance whatsoever to the subject before the Senate this afternoon. This body is attempting to pass a bill that has to do with the right of individuals to get medical and family leave. Instead of that, we find something coming in way from out in left field—maybe it is the right field in this instance, only the right is not very right in this instance—coming along and proposing something having to do with substituting compensatory time for the wages that the individual is entitled to.

That subject, if it had any merit, should be a matter to be considered by the Members of this body in a regular manner before a committee hearing. But the fact is, it does not have that kind of merit. There has been no bill before the body, and now we find the Senator from Wyoming coming forward with an idea that is totally foreign, alien to the whole strength and the substance of this legislation.

I believe that we ought to table the amendment. I believe that the amendment is bad on its face. I think it is wrong on its face. I think it is wrong on the merits. But I am convinced beyond any shadow of a doubt that even if it had merit, it does not belong on this legislation this afternoon.

One gets the feeling that there are those in this Senate who are trying to come up with amendments to try to delay the Senate from working its will and passing this legislation. I think we have had enough of these dilatory amendments. I suggest we move forward to final passage of the legislation.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. WALLOP. Mr. President, I yield myself such time as I may require. I ask the Chair to notify me when I have 1 minute left.

The PRESIDING OFFICER. The Senator is recognized.

Mr. WALLOP. Mr. President, one of the things in the 16 years as a Senator that has grown to be a cheerful pastime is this world of Alice in Wonderland. Quoting Yogi Berra, I believe, "deja vu all over again."

The Senator from Ohio made precisely the same speech in 1989 but with the provision that he promised that we would consider it. He stated at the same time that he and Senator NICKLES had worked out a provision similar to my amendment for public employees. My amendment is not a new thought, I say to my friend from Ohio. It is just that the rigid government control by the Democratic Party cannot find it in its heart to let Americans petition in the workplace for their own benefit. Unless the unions ask for it for them, it is not a competent request.

The committee is wrong that it has not been notified of this. The committee has letters, and the committee has had this legislation. This is not a new subject. Now the Senator says that it does not belong on this bill. Well, how quaint.

The purpose of the bill is family leave. The purpose of my amendment is family leave. The purpose of my amendment is to give families some choice in tailoring their workweek with the satisfaction of their employer. It is absolute poppycock, Mr. President, that I am, or any of the cosponsors of this amendment is seeking to apply 70-hour workweeks without compensation.

If the Senator from Massachusetts or the Senator from Ohio would willingly show me the employee who would sign such a request, which signature is the condition of my amendment, I would

happily withdraw it. But I do not believe you are going to find employees going up to their boss and saying I want to work 70 hours a week for the next 3 weeks, and I am signing this request. What rubbish. American workmen are more mature than American Senators. They will know what amounts to compensatory time in their interests.

Is it not interesting that those on the other side of the aisle were quite willing to provide State employees with a privilege that they will not provide to private employees? Is it not interesting that in a matter of weeks we passed compensatory time off for public employees?

Once again, are we not in the same sort of mindset—my friends on the left—that says only government in America can be trusted? Employees cannot be trusted with their own well-being. Certainly, employers cannot. Employers in America are uniformly crass, evil, uncaring, insensitive, and exploitative. Everybody knows that.

Mr. President, that is ridiculous on its face. This is the modern workplace with modern things that take place in that workplace. And among the things that take place are seasonal fluctuations, times when things are very busy and times when things are not so busy. When they are very, very busy, yes, an employer can pay time and a half. But when they are not very busy, the employee gets no time at all. So he gets time and a half for busy time and no pay at all for a slack time. Most people would think that they were better off getting paid full time for all of the time. But not my friends on the other side of the aisle. Full time for all of the time avoids a standard that has been in place since 1933. America's workplace has not changed since 1933.

If the Congress of the United States has any say in it, it will not, yet. The only thing that will change are the mandates we put on employers. But those requests, those legitimate requests of employees, cannot be trusted to be responsible.

Well, Mr. President, what disdain for the American workers is expressed in those two comments. What disdain for the worker's ability to choose in his or her own behalf. What disdain for the democratic processes of the Senate to say that we cannot allow this because we have not heard it, though we have heard about it since 1982.

Mr. President, logic would tell us that if this is the bill, the family leave bill, that families ought to be able to take care of their leave without having this Senate in its arrogance impose its ideas of what constitutes a good working environment. That is what is at issue, Mr. President.

I inquire of my friend from Connecticut, are we obligated to wait until 3:15?

Mr. DODD. No. I would take a minute myself to make a comment. Other than that, I am prepared—that is the remainder of my time.

Do we have to put in a unanimous-consent request? We are pretty close. I will take a minute, and the Senator may want to respond a minute.

Mr. WALLOP. Before that, I ask unanimous consent that Senator NICKLES be added as a cosponsor.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. SIMPSON. Mr. President, I rise in strong support of the amendment offered by my good friend and colleague, Senator WALLOP. My colleague from Wyoming has offered this particular legislation several times in the past, going as far back as 1986 and the stunning activity that followed the Supreme Court's Garcia decision. It remains a mystery to me that the Congress has failed to adopt—failed to even seriously consider—the labor policy embodied in this amendment. For some reason we seem to prefer to remain mired in the outdated, outmoded stuff on the books, to the detriment and frustration of both our work force and its employers.

As my good friend the senior Senator from Wyoming stated so clearly, existing Federal labor law essentially prohibits employers and employees from voluntarily entering into contracts which would permit hourly employees to accumulate paid leave as compensation for overtime hours worked. Under existing Federal law, State and local workers, seasonal workers, and professional workers are entitled to enter into comp-time arrangements with their employers, but hourly workers are not. This is a glaring omission in our efforts to promote a more flexible work environment.

Comp-time, the awarding of leave time in lieu of cash wages for overtime hours worked, provides both employers and employees with fair and flexible means of exchange. It allows employers to meet booms and busts in their business cycles without radically disrupting the size of their work force, either in times of plenty or times of lean. It similarly offers employees greater latitude in managing their working lives by allowing them to take their overtime compensation as leave time.

This is a proworker amendment. Employees today have greater expectations about relationships which should be permissible with their employers and the amount of control that they should be able to exercise over both their working and leisure time. It may be that many employees are really more interested in having more time off—to take vacations, to care for children or relatives—than they are in cash compensation for overtime. Yet the Federal Fair Labor Standards Act prohibits employers from offering precisely that—precisely the kind of flexible arrangements we have all been advocating on this floor. I agree with my fine friend that it is time to provide employees with greater latitude in managing their working lives without unreasonable overprotection from the Government.

I join with my colleague to urge the distinguished chairman of the Labor Committee to look much deeper into this issue, and I suggest that he will find that hourly employees want no less the kind of flexible workplace that is currently available to their public and professional counterparts. The Senator from Massachusetts has pointed out some of the potential loopholes in this particular amendment—a certain potential for abuse on the part of employers—but there is nothing there that cannot be corrected with some honest effort. I am willing to offer whatever assistance I may provide in such an effort.

Mr. DURENBERGER. Mr. President, I rise to briefly explain why I will be voting against the amendment offered by my friend and colleague, Senator WALLOP.

I am not sure that I disagree with my colleague on the merits—this amendment would give employees greater flexibility by allowing them to take comp time instead of overtime pay for hours worked over 40-hour per week.

But this is not the right forum for that debate. We are here to discuss the Family and Medical Leave Act. The amendments we offer today should try to shape a better Family and Medical Leave policy. The Wallop amendment changes the Fair Labor Standards Act, and I do not believe this should be part of today's discussion about a new national policy on family and medical leave.

I will be voting against the Wallop amendment today, but I hope that Senator WALLOP will continue to pursue the issues he has raised today in another forum.

Mr. DODD. Mr. President, the reason I have not gotten up and become so involved in this debate is because this is an extraneous matter and as the chairman of the committee and of the subcommittee dealing with labor matters, I asked to come over, because this does not relate to, in a sense, being germane to the issue of family and medical leave.

The Senator from Wyoming points out that it does have to do with the possibility of people having a different working relationship in terms of their hours. To that extent, I suppose there is some nexus.

My concern—and I say this with all due respect, not having been involved in the previous debate on this matter—is that this is an issue that does come up on a piece of legislation which has not really had the benefit—whether or not it should have, and arguably, it should have—of some discussion, at least, so that there is a way to determine whether or not this body wants,

on this hour of this day, when considering family and medical leave legislation, to make a fundamental change in the Fair Labor Standards Act.

Now, they may want to do that. But it seems to me there is a way in which to do it other than just offering an amendment on another bill on the floor.

I realize that could be difficult. And it depends in no small degree on whether or not others want to provide hearings, and so forth. That is a legitimate complaint about the process.

But I would urge my colleagues who may be attracted to the idea of maximizing flex time, or similar such circumstances, that we do it in a proper way; that we know what we are doing.

My concern here is, with 45 minutes of debate on a fundamental change in a 50-year piece of legislation that has worked pretty well, I think, we should be a lot more deliberate and be careful to take into consideration all the concerns that have been expressed by the Senator from Massachusetts and the Senator from Ohio on the ideas raised by the Senator from Wyoming. A 15-minute floor vote this afternoon, changing 50 years of basic law on a matter that has nothing to do—at least legislatively—with the issue before us I think is a very dangerous way to proceed.

And so, with all due respect, I oppose the amendment.

The PRESIDING OFFICER. The Senator's time has expired.

The Senator from Wyoming.

Mr. WALLOP. Mr. President, I have heard, in all fairness, this argument before. I have heard promises to look into this issue before.

I would say that if the argument were to hold any water at all—and I am not certain that that is a requirement for an argument in this body; just to be stated seems to be enough, if you control the votes—but if it were to hold any water at all, we would have at least to be able to say that we have done it for public employees.

We did it in 1985 in a matter of hours. This is not new. This is not some crazy idea out of the mountains of Wyoming, Mr. President. This is part of the workplace of America today. And we have not seen all public employees in America topple over dead by use of 70-hour weeks and abandonment of child labor laws, and all the other excesses that have been raised in argument against it.

I would say, Mr. President, I know wherein the forces lie. But this is not extraneous. If, in fact, we are trying to do as its proponents have said from the first hour of all of this debate, that we are trying to make the workplace family friendly, why in Heaven's name do we shirk from families who wish to have it friendly? Well, because we do not control the votes. The AFL–CIO, in this instance, does.

But someday, somewhere along the line, perhaps the Senate, Mr. President, will indeed find a way to respond to the flexibility that the modern workplace can and should provide for its employees. Time and a half for overtime is great. But no time for all time is really worse. In fact, most American employees, if they could work out something with their employer, would probably prefer to be paid day in and day out.

Mr. President, I yield back the remainder of my time.

Mr. DODD addressed the Chair.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. DODD. Mr. President, I ask unanimous consent that the vote occur now, rather than at 3:15.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DODD. Mr. President, I move to table the Wallop amendment, and I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from Connecticut [Mr. DODD] to table the amendment of the Senator from Wyoming [Mr. WALLOP].

The yeas and nays have been ordered, and the clerk will call the roll.

The bill clerk called the roll.

Mr. SIMPSON. I announce that the Senator from South Carolina [Mr. THURMOND] is absent due to a death in family.

The result was announced—yeas 64, nays 35, as follows:

[Rollcall Vote No. 5 Leg.]

YEAS—64

Akaka	Feingold	Metzenbaum
Baucus	Feinstein	Mikulski
Biden	Ford	Mitchell
Bingaman	Glenn	Moseley-Braun
Bond	Gorton	Moynihan
Boren	Graham	Murray
Boxer	Harkin	Nunn
Bradley	Heflin	Packwood
Breaux	Hollings	Pell
Bryan	Inouye	Pryor
Bumpers	Jeffords	Reid
Byrd	Johnston	Riegle
Campbell	Kennedy	Robb
Chafee	Kerrey	Rockefeller
Cohen	Kerry	Sarbanes
Conrad	Kohl	Sasser
Daschle	Krueger	Shelby
DeConcini	Lautenberg	Simon
Dodd	Leahy	Wellstone
Dorgan	Levin	Wofford
Durenberger	Lieberman	
Exon	Mathews	

NAYS—35

Bennett	Gramm	McConnell
Brown	Grassley	Murkowski
Burns	Gregg	Nickles
Coats	Hatch	Pressler
Cochran	Hatfield	Roth
Coverdell	Helms	Simpson
Craig	Kassebaum	Smith
D'Amato	Kempthorne	Specter
Danforth	Lott	Stevens
Dole	Lugar	Wallop
Domenici	Mack	Warner
Faircloth	McCain	

NOT VOTING—1

Thurmond

So the motion to lay on the table the amendment (No. 12) was agreed to.

Mr. DODD. Mr. President, I move to reconsider the vote by which the motion was agreed to.

Mrs. KASSEBAUM. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mrs. KASSEBAUM addressed the Chair.

The PRESIDING OFFICER (Mr. LEAHY). The Senator from Kansas.

EXPLANATION OF ABSENCE

Mrs. KASSEBAUM. Mr. President, Senator THURMOND asked that I make an announcement that he would like to be recorded as being necessarily absent on this vote and other votes today and tomorrow due to the death of his brother.

The PRESIDING OFFICER. The record will show that on each vote today and any subsequent votes today or tomorrow.

The Senator from Connecticut.

Mr. DODD. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. D'AMATO. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered. The Senator from New York is recognized.

Mr. D'AMATO. Mr. President, I ask unanimous consent that I be permitted to talk for 5 minutes as in morning business.

The PRESIDING OFFICER. Is there objection to the request of the Senator from New York? Without objection, it is so ordered. The Senator from New York is recognized for not to exceed 5 minutes.

THE ADMISSION OF RADOVAN KARADZIC INTO THE UNITED STATES

Mr. D'AMATO. Mr. President, it is out of a sense of utter disbelief that I come to the floor to protest Secretary of State Christopher's decision to grant a visa to Radovan Karadzic, the leader of the self-proclaimed Serbian Republic of Bosnia. He was publicly identified by former Secretary of State Eagleburger as a war criminal who should be tried by a Nuremburg-style tribunal.

Kardzic's admission into this country is a moral outrage.

It was Secretary Eagleburger who had come under criticism for his policies regarding the conflict in the former Yugoslavia. He saw the need to

identify Karadzic as a war criminal. I do not understand why Mr. Christopher failed to realize this.

Karadzic's admission into the United States now lends our tacit approval to his actions as well as those of Slobodan Milosevic and the other war criminals that have raped and slaughtered thousands of Bosnians, and created over a million refugees.

As if his admission were not bad enough, I understand that he will not be subject to arrest for the war crimes with which our State Department has identified him. For all the talk of an international tribunal, for all the talk of justice, this chance is now gone.

The war in Bosnia has resulted in a new genocide:

The rape of tens of thousands of women and young girls by Serbian forces, thousands of men, women, and children have been detained in over 100 concentration camps in Serbian-controlled areas of Bosnia, and according to Bosnian President Izetbegovic over 100,000 people have been slaughtered.

America must never coddle mass murderers. By issuing this visa, we are rewarding aggression with appeasement. As history has so often shown, those who cannot remember the past, are condemned to repeat it.

Worse yet, the current peace talks in Geneva have only served to buy time for the Serbs, to consolidate their position, and ultimately to legalize Serbia's conquests.

These negotiations are no more than a replay of Munich.

Mr. President, I have to tell you, this is a sad day for America. I hope that the Secretary of State will recognize that he is going to invite someone who has been publicly identified as a mass murderer, something akin to what Europe and Neville Chamberlain did when they sat down with Hitler ignoring the circumstances, and negotiated a nation away. Appeasement failed to stop Hitler and it won't stop the Serbs. Just as Czechoslovakia was sold down the river, Bosnia will also be sacrificed to appease the unquenchable appetite of the bloody aggression of Slobodan Milosevic.

History has proven that a dictator's appetite is never fulfilled.

Mr. President, I have written a letter today protesting this action. I hope that President Clinton would review this and before it's too late keep this mass murderer Karadzic from coming to the United States. We must let him know that we are not going to be a sanctuary to a butcher.

Mr. President, I yield the floor. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. DOMENICI. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DOMENICI. Mr. President, I want to assure the Senator from Connecticut I merely want to make a statement. I ask unanimous consent I be permitted to speak for 7 minutes as if in morning business.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

THE CHALLENGE OF TODAY

Mr. DOMENICI. Mr. President, in the country today a lot of talk is forthcoming about what has happened to the American economy. Why is it not generating new jobs while it is generating new growth? I think we all would like to see more than 3.8 percent growth in our domestic product, but clearly that is a long way from where we were a couple of years ago and a long way from any recessionary periods. This is real sustained growth now. And it is not producing any new jobs.

Frankly, that is the challenge of our day, to find out why and what we can do about it.

I do not think it has anything to do with short-term stimulus. In fact, I urge the President not to have any short-term stimulus unless he has at the same time a long-term deficit reduction plan because I do not think a short-term stimulus is going to do anything other than send some wrong signals that we are not busy about getting the long-term deficit under control.

Second, I urge that the President and the Democratic leadership in the Senate and the House put together first a long-term deficit reduction package consisting only of cuts in Federal expenditures. No one is going to believe that there can be a credible package until they see that exposed and debated.

Whether you are going to have any new taxes or not is totally irrelevant, unsupportable, and I do not think there will be much support on this side of the aisle unless and until you see a long-term enforceable budget cut package. It is the expenditures of our Government that are causing the deficit, not the lack of taxation.

So all these questions that we are being asked: Do you support this tax? Do you support that tax? I will make it clear right now I support none of them. I hope Republicans say they support none of them, because you have to see a deficit cut package first. There are many who will say no taxes under any circumstances. But there is an overwhelming chorus that says none until there is a deficit reduction package in place, multiyear in nature, significantly reducing the deficit, perhaps as much as half in 4 years as heretofore committed by our President. But, indeed, it ought to get us to the path that will lead us to no longer having deficits.

You are not going to get sustained growth until you make that commitment a reality to the American marketplace. Until you make it a reality, long-term interest rates will not come down. You are depleting the national savings, the net national savings, which is the most significant thing we must do for long-term growth.

Now, having said that, I think it is rather interesting to note—and maybe it is more than interesting, but I will just call it interesting—that while you have this kind of problem, why are business people, men and women, corporations large and small, not hiring more people, not creating more jobs, while that is the issue of the day, we are on the floor debating putting more cost on business in the name of something we all think would be nice, would be good, would be better than where we are. Let me assure you, business is not going to add more people, create more jobs unless and until the burden of doing business is lowered, not raised, until you get health care costs coming down, not going up, until you stop saying to them you have to incur these kinds of mandated expenditures because your Government says you must and then run around asking why are you not adding jobs.

So, Mr. President, I think it is illtimed to place any mandates that cost substantial amounts of money on the American businessmen and women, corporations, partnerships large and small. And that is essentially why I am not going to support the bill before us.

I hope we have no mandates on American business until we have an American set of policies for growth. Why would we put mandates on when we are running around beating our brains out trying to find growth policies? Do you not think we would put those in place before we come along and say let us order business to pay more for whatever the cost?

Having said that, I do not want anyone to think that the cause in this bill is not a very good one. It is an excellent one. Frankly, it is a close call. But I would have preferred to see something like a tax credit that we voted on before so that there would be no additional burden on business, because a tax credit is dollar for dollar against income taxes for plans you are forced to pay for. It would be an incentive for business to do it and in a sense, since this is a new mandate, it would be highly preferential if you used the tax credit. And while some think that is an argument against it because there are other things which have a real important position in terms of social responsibilities of business, this would be a preferred one if it were a tax credit. I frankly think it would be much more accepted by the business community and, I must say, much less by way of additional burden on an American business marketplace that cannot add jobs

because it is suffering under an enormous burden right now.

Now, I am willing to say that besides the increased costs of health care and other mandates, there is another anomaly in the marketplace, I say to my friend from Connecticut. We are winning the battle of increased productivity, and increased productivity is permitting businesses especially on the social side to do more work with less man hours. So when you add that to the increasing cost of health care and other mandates, you do have a casual relationship between a growing economy with no new jobs and previously a growing economy with additional jobs.

So I do believe there is a better way to do this under the circumstances of today's job market, and I think that circumstance will be with us for a few years.

I have some additional remarks that examine the consequences and pros and cons of some different approaches. I have nothing but the greatest respect and esteem for my good friend, Senator DODD, with whom I serve on two committees.

We joke with each other about one of these days we will be shoulder-to-shoulder supporting something. That will happen. Indeed it will because that will be good for the American people I am sure. I look forward to the day. I am sorry that this is not a shoulder-to-shoulder day with him today.

Mr. President, I would like to take the opportunity to comment on S. 5, the Family and Medical Leave Act.

America's working families have legitimate concerns. Specifically, how does the American work force, man or woman, juggle the competing demands between the job and the family when illness strikes a spouse, a child, a parent, or oneself?

I believe there are some options that can provide some relief. I am unconvinced, however, that S. 5 is the proper vehicle for addressing these problems. I question how legislating a 12-week, unpaid leave mandate covering approximately 50 percent of the work force resolves legitimate demands on the American household.

My reasons for opposing S. 5 are straightforward. I believe it discriminates against the lower or single income earner, the majority of whom are women. It has an unequal impact on the work force. We are unable to assess the real cost of this mandate to employees and to our economy's long-term health. And, it deprives the employee and employer the flexibility they need to develop individual and competitive employee benefit plans.

With regard to the first point, this legislation is not targeted to the group we most want to help. Higher income duel-earner families can best afford to take unpaid leave and lower income single-earner families will help pay the cost. Furthermore, research shows that higher mandated benefits do not raise the worker's overall compensation package but, instead, reduce either cash wages or other nonwage benefits.

We hear anecdotal evidence of those who have lost their jobs because of absenteeism for pressing family responsibilities. I do not doubt that these circumstances occur, and this is a sad situation. At the same time, we have absolutely no facts to substantiate the degree of this problem. The studies that I have reviewed indicate that the majority of businesses value their employees enough to transfer the workload to another employee, most often without additional compensation to that fellow worker.

For the many working women who must juggle home and work, who make the lowest wages, are often in small businesses not covered by this act, and who have the least long-term job security and minimal pension or retirement opportunities, this act does little to resolve their problems.

Who this measure will help, however, is the higher income, dual-wage-earning family who can afford to take this option.

This bill's unequal impact on the work force is another problem. We all recognize that we must spare small businesses the burden of an additional benefit they may not be able to afford at this time. Thus, we recognize this measure has costs. I presume we are suggesting that a business of 52 people can better afford this benefit than one with 49 employees. Giving 50 percent of the population a benefit not available to the remaining population is like arguing whether a glass is half full or half empty.

The bottom line is that this measure has a severe, unequal impact on 50 percent of the work force. It certainly cannot be touted as answering equitably the serious demands upon the American family.

Another area of concern is the real cost of this mandate to employees and to our economy's long-term health. Some claim that the only cost is the maintenance of health insurance. When we take into account the income losses to coworkers who usually take up the slack for an absent worker, the losses from this legislation could be as much as $6 billion a year, or $130 to $140 per worker. Absent real data on this issue, we have no way of assessing the costs, but I can assure you that it is more than the $10 per year per employee offered by the proponents of this bill.

Finally, this measure deprives the employer and employee the flexibility of developing individual and competitive employee benefit plans. Workers lose choice in the kind of benefits that best meet the diverse individual needs of our work force, and employers lose the flexibility of offering plans that best fulfill its business and employee objectives.

Given these concerns, and they are by no means conclusive, the real issue is whether we add yet another mandate without fully understanding its implications. While I hear the arguments that we should pass this measure because it has been discussed for 7 years, this is simply not a valid justification for another mandate.

There are alternatives, and I think they are good ones. These alternatives offer less costly and less discriminatory approaches. If we care about families and if we care about jobs for our American workers, then we should remember who we are trying to help and how we can best facilitate this assistance.

In closing, I want to reiterate strongly that those of us who cannot support S. 5 understand the concerns of the American family. We are aware of the impacts of birth, illness, and death on our fellow citizens; we, too, confront these situations in our own lives. We are pro-family and we are caring individuals.

We only ask that we better assess the real problems, that we offer a package that is more inclusive than exclusive, and that we provide employers and employees flexibility in choosing what best meets their needs. I think the families of this country understand that these are reasonable expectations, and that there are legislators who believe deeply there are ways to help America's families without resorting to another Government mandate.

Mr. DODD. Mr. President, I want to say before the Senator from New Mexico departs that I want him to know that I tried hard to get his support on this. I went to his office with a fistful of charts, graphs, and arguments that I thought would absolutely convince my colleague from New Mexico. I must tell you, I got this close.

But he has made a compelling argument as he always does. Unfortunately, we were not able to reach agreement on this. But I too, think perhaps sooner or later we will stand shoulder-to-shoulder as we have on other matters.

Mr. DOMENICI. Absolutely. I yield the floor.

Mr. JOHNSTON. Mr. President, I rise today to express my continued support for S. 5, the Family and Medical Leave Act. Enactment of this legislation is long overdue.

This measure addresses one of the most fundamental and difficult choices that any individual may to have to face—having to choose between job security and one's family needs. It is a choice that hard working Americans should not be forced to make.

I am also supportive of this legislation because it looks forward and recognizes the changing social and economic climate of our Nation.

In the past a disproportionate number of women performed the duties of care-giving following the birth of a

child or in the event of a family illness or crisis. This was possible when one-income, two-parent families were the norm.

Today, however, women are entering the workforce in ever increasing numbers became they either head a single-family household or must contribute an additional income to the family just to maintain basic needs.

By recognizing this reality, a family and medical leave policy will strengthen the family and foster the development of loyal employees. Under this scenario, there can be no losers.

Business will win by retaining valuable and skilled employees. Families will win by securing peace of mind. Our Nation will win by closing the competitive gap with the family of industrialized nations who have experienced success with similar policies.

Those opposed to this legislation claim that it would increase costs to business and create unnecessary regulatory burdens. However, studies commissioned by the administration clearly show that this reasoning is both unrealistic and unfounded.

Studies have placed the cost of this policy to businesses at between $5 and $7 per covered employee per year. But without such a policy the cost of providing unemployment insurance for displaced workers would be far greater. The benefit of a family and medical leave policy is clearly greater than the cost of retraining new employees, unemployment expenditures, as well as the potential losses to families faced with loss of employment.

Finally, as I have stated in the past, I consider it a tragedy that our Nation is currently the only Western industrialized nation without such a policy. I am pleased that the administration has stated its support for this measure. Enactment is long overdue.

Mr. BOREN. Mr. President, I originally intended today to introduce the Ethics in Government Reform Act as a floor amendment to the Family and Medical Leave Act. My intent was to express to my colleagues that I am serious about my commitment to the American people to halt the revolving door of lobbying in the executive and legislative branches of our Government.

Mr. GLENN. I note that Senator BOREN's Ethics in Government Reform Act legislation, S. 36, has been referred to the Governmental Affairs Committee, which I chair. The Governmental Affairs Committee, has jurisdiction over Governmentwide ethics issues, and has always played a key role in drafting and reviewing lobbying and ethics reform legislation. I have encouraged Senator BOREN to work with the committee on S. 36 and the important policy issues it raises about which employees should be covered, what types of contracts with the Government should be banned, what is the appropriate length of post-employment bans, and more. These are some of the same policy issues that have received public attention since President Clinton signed an executive order placing stricter controls on the post-employment activities of certain employees who join the Clinton administration.

Mr. BOREN. Although I am committed to moving forward with this legislation, I understand the need for a hearing on the bill. I look forward to having the chance to testify and working with the Governmental Affairs Committee to make sure this legislation is as strong and just as it can possibly be. The issues involved in this legislation are not as clearcut as they appear to be, and we must make sure that this legislation is carefully crafted to stop the revolving door without harming people who are not involved in nefarious lobbying practices. I understand that Senator GLENN has agreed to hold a hearing on this bill and the issues it raises before the end of March. I appreciate his efforts in this area and his consideration in holding a hearing so promptly. The American people have a right to know where we stand as Members of Congress on this important matter so that they may hold us accountable.

Mr. GLENN. I look forward to working with Senator BOREN in the coming weeks on a hearing which will shed more light on the issues raised by S. 36. As Senator BOREN indicated, I am committed to holding a hearing on this bill in the Governmental Affairs Committee before the end of March.

Mr. BOREN. Mr. President, I appreciate the speed with which the Governmental Affairs Committee is moving on this legislation. I therefore will not offer my Ethics in Government Reform Act as an amendment on the Family and Medical Leave Act. I want to thank Senator GLENN for his help and Senators MCCAIN, CAMPBELL, and BRYAN for their support as cosponsors of the bill.

AMENDMENT NO. 13

(Purpose: To clarify that the provision of unpaid family leave by any employer shall not affect the applicability of an exemption for executive, administrative, and professional employees from certain requirements of the Fair Labor Standards Act of 1938)

Mr. PRESSLER. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from South Dakota [Mr. PRESSLER] proposes an amendment numbered 13.

Mr. PRESSLER. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

Section 102(c) of the bill is amended to read as follows:

(c) UNPAID LEAVE PERMITTED.—

(1) IN GENERAL.—Except as provided in subsection (d), leave granted under subsection (a) may consist of unpaid leave.

(2) RELATIONSHIP WITH FAIR LABOR STANDARDS ACT OF 1938 FOR EMPLOYERS.—Where an employee is otherwise exempt under regulations issued by the Secretary pursuant to section 13(a)(1) of the Fair Labor Standards Act of 1938 (29 U.S.C. 213(a)(1)), the compliance of an employer with this title by providing unpaid leave shall not affect the exempt status of the employee under such section.

(3) RELATIONSHIP WITH FAIR LABOR STANDARDS OF 1938 FOR SMALL BUSINESSES.—

(A) IN GENERAL.—Where an employee is otherwise exempt under regulations issued by the Secretary pursuant to section 13(a)(1) of the Fair Labor Standards Act of 1938 (29 U.S.C. 213(a)(1)), the granting of unpaid family leave by a small business employer shall not affect the exempt status of the employee under such section.

(B) DEFINITIONS.—As used in this paragraph:

(i) SMALL BUSINESS EMPLOYER.—The term small business employer'' means a person that—

(I) is an employer (as defined in section 3(d) of the Fair Labor Standards Act of 1938 (29 U.S.C. 203(d))); and

(II) is not an employer (as defined in section 101(4)).

(ii) UNPAID FAMILY LEAVE.—The term ''unpaid family leave'' means—

(I) unpaid leave that may be taken for one or more of the reasons described in subparagraph (A) or (B) of section 102(a)(1), and may be taken as intermittent leave or leave on a reduced leave schedule; and

(II) restoration to employment, and continued coverage under a group health plan, in accordance with section 104.

(4) EFFECTIVE DATE.—Notwithstanding section 405(b)(1)—

(A) paragraph (2), and the application of this title for purposes of paragraph (2); and

(B) paragraph (3), and the application of the provisions described in subclause (I) or (II) of paragraph (3)(B)(ii) for purposes of paragraph (3),

shall be deemed to have taken effect on June 25, 1938.

(5) REPEAL.—Effective 1 year after the date of enactment of this Act, paragraph (3) is repealed.

Mr. PRESSLER. Mr. President, one of the consequences of S. 5, the Family and Medical Leave Act, involves the Fair Labor Standards Act, or FLSA. Though the FLSA can get mired in complicated legalisms, the issue I wish to discuss is very simple. This issue is not about family leave itself, but flexible family leave—flexible for both employer and employee.

To explain, Mr. President, permit me to indulge in a brief review of the basics of the FLSA. As my colleagues well know, employers can opt to pay their workers hourly wages or a yearly salary. The FLSA was crafted to protect the rights of the hourly wage earner, particularly with respect to overtime pay.

My concerns involve only salaried employees, usually managers or execu-

tives. They are considered exempt from the FLSA. However, a Department of Labor interpretation has altered this exempt status with respect to unpaid leave policies in the public and private sectors, entitling these employees for overtime and other benefits.

Let me explain this interpretation by way of an everyday example. Many businesses already offer unpaid family leave, either voluntarily or in compliance with State or local mandates. Pursuant to these policies, many employees seek partial days off. For example, if a salaried employee's child gets sick at school in the middle of the day, an employer should have the option of granting that employee a half-day of unpaid leave to care for the child. However, according to the Department of Labor, if the employer were to grant that salaried employee unpaid leave for a partial day, that employee is being treated as an hourly employee and thus, can claim overtime and other benefits under the FLSA.

In fact, according to the Department of Labor, the mere existence of a policy that allows for salaried employees to take partial day unpaid leave for any reason can cause the FLSA exemption to be lost for all salaried employees, regardless of whether the policy is enforced.

In short, under current law, an employer cannot offer salaried employees a partial day of unpaid family or medical leave. Instead, the employer is forced to pay a full day's salary for less than a full day's work, or the employer must require the employee to take a full day's unpaid leave, even if the employee does not need or desire to do so.

Does this sound unfair? It more than sounds unfair. It is unfair. It's unfair for both the employer and the employee. So unfair that the proponents of S. 5 have crafted a narrow solution. Specifically, S. 5, the bill before the Senate, allows employers covered under the bill the option of offering partial-day unpaid family or medical leave without being subject to a lawsuit under the FLSA.

That makes sense. I commend my colleagues from Connecticut and the other authors of the legislation for including this provision. It promotes flexibility for both employer and employee to use only the amount of unpaid leave that is needed.

Unfortunately, this narrow solution exposes other problems and potential liabilities for large and small businesses. This bill provides protection to covered employers only from the date of enactment. However, there are many employers today who—either voluntarily or in compliance with a State or local mandate—offer family and medical leave and have granted partial day's worth of leave to salaried employees.

Should not these employers be protected from liability? After all, simple fairness demanded that those who comply with S. 5 be protected. Why stop there? Should not that same fairness extend to employers who acted to meet the needs of their employees long before mandated family leave was vogue or politically correct?

My amendment addresses this concern. It simply protects the conscientious employer who listened to the needs of his team of workers and constructed a flexible leave policy. We must not discourage employer innovation to improve worker relations or productivity. However, under S. 5 we send a message to business that it's better to wait for Government to come along and mandate a leave policy. Though I believe mandates are a mistake, promoting mandates over employer innovation is an even bigger mistake. My amendment prevents that mistake from being made.

While we are on the subject of policy promotion, Mr. President, permit me to point out an even greater consequence of S. 5. As we all know, S. 5 impacts only 5 percent of all American business, perhaps less than 5 percent in my home State of South Dakota. Certainly, we all recognize that there are numerous costs of mandating leave to the more than 95 percent of American employers not covered under this bill. At best, we should be encouraging those not covered under S. 5 to offer similar voluntary leave policies.

Ironically, S. 5 provides disincentives to employers not covered under this legislation. As I stated earlier, S. 5 allows affected employers to offer a partial day's unpaid family or medical leave to all employees. In short, it allows flexible family leave. Why stop with employers covered under this legislation? Should not we allow all employers the option of offering flexible unpaid family leave? Of course we should, but S. 5 fails to protect all employers. And by doing so, it is providing a disincentive for these employers to offer similar, flexible policies voluntarily.

Even worse, S. 5 punishes smaller employers who may not be under S. 5 but must comply with a State or local mandate. It punishes these businesses by exposing potential liability and forcing them to opt for a one-size-fits-all leave policy that hurts both employer and employee.

My amendment would solve this problem as well. It simply allows for all employers to offer flexible unpaid family leave, whether it is done so voluntarily or in compliance with local, State, or Federal law. In short, it recognizes the importance of family leave while minimizing its costs by providing both employee and employer the flexibility to take just the right amount of unpaid leave.

Mr. President, my amendment addresses one part of an enormous FLSA problem. The Department of Labor's interpretation extends to all types of unpaid leave policies, not just family leave. It affects employers in the public and private sector. In fact, the Employment Policy Foundation estimates the current liability exposure is $39 billion. I know the chairman of the Senate Labor Committee is aware of this issue, including my colleague from Connecticut, as well as the ranking Republican, Senator KASSEBAUM. In fact, my good friend from Kansas has been a strong leader on this issue, and introduced legislation last year to address the public sector problem.

My amendment does not attempt to solve the entire FLSA problem with respect to partial-day leave. I respect the need for congressional hearings to discuss all aspects of this issue. My amendment simply addresses this problem as it relates to family leave. In fact, to underscore my support to achieve a comprehensive solution to the unpaid leave problem, my amendments's protections to employers not covered under the act only would be in effect for 1 year.

My amendment is designed not to circumvent the legislative process. By applying a 1-year limit, my amendment encourages the Congress to enact a comprehensive solution, while enabling employers to construct flexible family leave policies without the fear of liability.

My amendment is a modest, reasonable answer, but passing it will send a strong signal that we intend to solve the larger problem. At the very least, let us simply provide for protection, albeit temporary, in one narrow, but important case—the case of an employer offering family or medical leave, whether it is voluntary or compulsory. Doing so will demonstrate that Congress does not intend to punish the good intentions of America's employers. We must stand by our commitment to make family leave available to the greatest number of working families without imposing unnecessary costs and burdens on businesses large and small.

Mr. President, this chart will illustrate the points I have made. I ask unanimous consent that a copy of this illustration be printed in the RECORD at this point. Under the Fair Labor Standards Act, as interpreted by the Department of Labor, an employer can be held liable under FLSA if he grants a salaried employee a partial day of unpaid leave. According to the Department of Labor interpretation, that employee would be considered an hourly employee rather than a salaried employee, and the employer would be in violation of the FLSA.

S. 5 allows an employer covered under the act to grant a partial day of unpaid leave to a salaried employee without being liable under FLSA, but only for family and medical leave taken after the enactment of the bill.

To illustrate, the first scenario is an employer with 50 or more employees who has a family leave policy similar to S. 5, the Family and Medical Leave Act.

The salaried employee needs to take leave to pick up his sick son at school. He has used up his paid leave and he asks his employer that it be taken out of his unpaid leave allotment. The employee would prefer to take a partial day of unpaid leave. Could the employer have granted a partial day of unpaid leave prior to the enactment of S. 5 without being liable under FLSA, based on S. 5, the legislation we are considering? The answer is "no." If the Pressler amendment is added, the answer is "yes." That is the purpose of my amendment.

The second scenario assumes the same set of facts as the first scenario—an employer with 50 or more employees. The salaried employee wants to pick up his sick son at school. He used up all of his sick leave, all of his paid vacation leave, and he now wants to take a half day of unpaid leave. Assuming S. 5 was law when leave was negotiated, could the employer grant a partial day of unpaid leave without being liable under the FLSA? Based on S. 5, "no." Under the Pressler amendment, "yes."

The next example is similar to scenarios 1 and 2, but assumes the employer has fewer than 50 employees. Could the employer grant a partial day's unpaid leave without being liable under the FLSA? Based on S. 5, "no"; based on the Pressler amendment, "yes."

I believe these examples clearly illustrate the pay docking problem. This is why I am offering my amendment. Employers should not be penalized for offering their employees partial day unpaid leave.

Mr. DODD. First of all, let me commend our colleague from South Dakota who is providing a valuable service. This is a complicated issue, the docking issue. The word comes from docking one's pay, in a sense. He is properly—and I appreciate his comments about the bill, where we have tried to take care of that salaried employee who otherwise would place the employer in violation of the Fair Labor Standards Act.

What we were able to do is deal with the situation as it is confined within the parameters of eligible employees under the broader parameters of the family and medical leave legislation. We were able to get that done. What we have not been able to deal with yet is the broader question that needs to be dealt with. As he points out, if you employ fewer than 50 people, you are not dealt with in this legislation.

I want to say to my colleague from South Dakota that I have already notified—in fact, in public hearings we have gone over this issue and explained how the broader question needs to be dealt with. We were confronted with trying to get this piece of legislation up and on the floor of the Senate in anticipating the very legitimate question raised by the court decisions. So we were able to reach an agreement as it pertains to this bill.

But I want to tell my colleague from South Dakota that we are going to deal with the broader questions, including the retroactivity issue. There is a lot of good dialog going on between the various parties in the country, and I hope that possibly with that assurance I am giving him here this afternoon, he might withdraw the amendment, given the fact that we need to look at this and hold some good hearings on it to understand the full implications of it. But this is not a hollow proposal or a commitment. I believe it is a very important issue that needs to be addressed generically. We have not done that with this bill. We have only dealt with it within the parameters of this bill. I am in total agreement with my colleague that this issue must be addressed immediately.

Mr. PRESSLER. Mr. President, I commend my colleague for his leadership and management of this bill. If I may ask a question of my colleague, what does he envision as a timetable for addressing this important problem? Perhaps he has talked to the administration. What would he see as a timetable for addressing this pay docking issue in this coming year?

Mr. DODD. Mr. President, not being the full committee chairman, I am reluctant to commit my chairman to a time certain. I would hope that in this calender year we will complete this. It is a legitimate issue that needs to be addressed. I do not know of anybody who is really in disagreement with dealing with this. This is not an issue where there is a group lined up against dealing with the docking question. I would say as soon as possible and practical, and he has my commitment on that.

Mr. PRESSLER. I thank my friend. With that, I shall agree to withdraw my amendment with the understanding that we will revisit this. I appreciate the fact that he is working on this, and with his leadership, I hope we can accomplish a clarification in this area.

Mr. President, I commend my colleague from Connecticut and withdraw my amendment.

The PRESIDING OFFICER (Mr. WELLSTONE). The Senator has a right to withdraw his amendment.

The amendment (No. 13) was withdrawn.

Mr. DODD. I thank my colleague. Mr. President, we are down to one or two amendments, possibly, and there is an important meeting going on, I believe, at the White House with a number of Members of the Senate at this particular hour. So it would not be possible for us to have a vote.

For those who have outstanding amendments who care to come to the floor, I am perfectly prepared to entertain those and debate them over the next hour or so, if those are going to be offered. We ought to utilize the time, it seems to me, it being 4:05; it would be a way to handle those issues.

I make that request to Members who wish to offer amendments on this legislation, so we might continue to move the product along. While awaiting word from other Senators as to whether they are going to offer the amendments, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. SPECTER. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. SPECTER. Mr. President, in the absence of any other Senator on the floor, I intend to speak for a few minutes on the bill. I will ask unanimous consent to proceed for up to 7 minutes as in morning business.

Mr. President, I support the Family and Medical Leave Act of 1993. My wife, Joan Specter, brought the issue of family and medical leave to my attention long before it became a highly publicized issue. She, in fact, was a sponsor of such legislation in her capacity as a city councilwoman in the city of Philadelphia. I had the pleasure of cosponsoring with Senator DODD as an early piece of legislation, the Parental and Medical Leave Act, as we began the legislative session in 1987, some 6 years ago in the 100th Congress. I have had, in my 12 years in the Senate, a longstanding policy in my office for family and medical leave.

Our country has experienced a major demographic transformation in the composition of today's work force and in family households. The General Accounting Office reports that over the past 40 years the female civilian labor force has increased by about 1 million workers a year. By 1990, nearly 57 million women were working or looking for work. This represents, I am told, a 200-percent increase since 1950.

The Families and Work Institute predicts that by 1995, two-thirds of women with preschool children and three-quarters of women with schoolage children will be in the labor force.

According to the Bureau of Labor Statistics, currently 96 percent of fathers and 65 percent of mothers work outside the home; 74 percent of women in the 25 to 54 age category are in the labor force. Of this number, 56 percent are mothers with children under the age of 6. More than half of mothers are mothers with children under the age of 1.

Equally as dramatic has been the substantial increase in the number of

single-parent households. The Census Bureau reports that single parents account for more than a quarter of all family groups with children under the age 18 in 1988, and more than twice the number in 1970. This accounts for millions of women struggling to support themselves and their children while managing their children's needs and their own needs. In fact, single mothers often cannot keep their families above the poverty line.

Again, according to the Census Bureau, in 1987, 20 percent of all children under age 6 lived with single mothers. The poverty rate among these young children was more than five times the poverty rate in two-parent families. This signifies the financial and social effects of not acknowledging the demographics of today's families.

A 1990 report by Columbia University's National Center for Children and Poverty found that the incidence of poverty for African-American children whose mothers were employed full time declined dramatically—from 26 to 13 percent. Obviously, a meaningful reduction.

Both the Government and the business community must do their share in enabling such women to remain independent. This legislation acknowledges the needs of such families, and I am hopeful that it will contribute to further reducing the poverty levels in both single- and two-parent families.

In addition, the burdens of caring for parents have and will continue to increase since the elderly are the fastest growing segment of our American population.

The National Council on Aging estimates that almost a quarter of the more than 100 million American workers have care-giving responsibility for an older relative. This means that as we address the area of health reform and reducing costs, home care for long-term care needs are not only more cost efficient but often were more preferable than institutionalization, which is dehumanizing as well as extremely costly.

It is common that the burden of assisting the elderly, chronically ill, and the disabled, falls on working children, spouses, or other immediate family members. The National Council on Aging found that two-thirds of nonprofessional care-givers for such persons are working women.

While there is concern about the cost involved, findings from a report entitled the "U.S. Small Business Administration Employee Leave Survey" found that:

> The net cost to employers placing workers on leave are substantially smaller than costs of terminating an employee, which may well be equal in amount to 10 weeks or more of unpaid leave.

It is important to note that this legislation would cover only businesses with 50 or more employees which excludes 95 percent of all U.S. employees. That exemption has been made to try to lessen the burden in a realistic way on small business. It is always a matter of concern that we do not mandate programs which unduly burden small business and destroy the opportunities for more jobs in our country, especially in a time of economic recession, which I believe we are still in, notwithstanding some conclusory reports to the contrary.

My travels around the country, and especially my intense travels across Pennsylvania's 67 counties, tell me repeatedly that there are people out of work, there is a recession, and we have to stimulate the economy. In undertaking the Family and Medical Leave Act, we do recognize the burdensome aspect of some of it, but the exemption of small business has been crafted to try to minimize that.

I believe that the changes in our country necessitate a profound reorientation as to how both the private and public sector respond to the realities of working men and women and their families. This act is a step in the right direction: Government responding to the real life needs of the American people.

This legislation has had a long and difficult history, Mr. President, I think that we are on the verge of passing a meaningful bill. It has not been easy. I compliment my friend and colleague, Senator DODD, who came to the Senate after the 1980 election, as I did, and at that time I worked with him on this bill. It has been difficult. There have been estimates of enormous costs which have been pared down. The bill has been refined, and I think that in its present form, it is a bill which ought to be enacted. I, therefore, am pleased to be a cosponsor and lend my support to this legislation.

Mr. DODD. Will my colleague yield?

Mr. SPECTER. I will.

Mr. DODD. Mr. President, I just want to say that the very first person who joined with me in this effort is the distinguished senior Senator from Pennsylvania. He has articulately, as he always does, explained his own arrival at the importance of this particular idea and concept, but we began, even prior to 1986, when Senator SPECTER and I arrived in the Senate in January 1981, or shortly thereafter. We joined together and formed a children's caucus in the Senate. There was no single committee or caucus. We had caucuses on every imaginable subject matter one could think of and for every imaginable constituency in the country except for the one out of every four Americans who happen to be a child under 18.

In a bipartisan way, more than 10 years ago we formed the children's caucus. Those children's caucus hearings that we held on a rump basis basically examined for the first time that I know of the issues of latchkey children, child abuse, dropout long before any formal committees of the U.S. Senate examined those issues, and then introduced as a result of those rump hearings efforts in child care and family and medical leave.

When the history is written about this particular law, the name of ARLEN SPECTER ought to appear in bold type and at the top of the list because he was an early and strong backer and supporter of a variety of issues that affect the children and young people in this country. I appreciate immensely his support again today.

Mr. SPECTER. Mr. President, I thank my distinguished colleague from Connecticut for those very kind remarks. I hope that when the history of this important legislation is written, and if my name does happen to appear in a footnote perhaps, that they put the footnotes at the bottom of the page, instead of putting them at the end of the book where nobody reads them. I expect no greater recognition than in a footnote.

Senator DODD, as usual, ably brings up a facet of our working together which I had not included in my statement. He is accurate. At that time, I was chairman of the Juvenile Justice Subcommittee, a distinguished subcommittee which did not have too much of a constituency when the large groups of advocates and lobbyists met on the second floor of the Dirksen Senate Office Building, commonly referred to as Gucci gulch. They all congregated around the Finance Committee. None of them found their way down to the Judiciary Committee.

In those days, the distinguished senior Senator from Connecticut [Mr. DODD] was not the chairman of the powerful subcommittees as he is today. In his ingenious way, he approached the issue of the children's caucus. It was his idea. He came to me and I was pleased to be his cochairman, and we did have some very important hearings at that time and explored some very important subjects which I think have given rise to at least part of this legislation.

Senator DODD, in his work on the Labor and Human Resources Committee, has done very important work in this field. This has been a tough matter. CHRIS DODD has come to me over the years and asked for support on cloture votes. I have supported him; however, the legislation did not reach fruition. I think this year is the year that that is likely to happen. We will have to monitor closely to see that it is not excessively burdensome to whom we apply the mandates to see that it accomplishes the purposes for which it was intended.

Mr. President, in the absence of any other Senator on the floor besides Senator DODD and myself, I now ask unanimous consent that I may proceed for a

period not to exceed 7 minutes in morning business.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. SPECTER. I thank the Chair.

(The remarks of Mr. SPECTER pertaining to the introduction of S. 292 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

Mr. SPECTER. Mr. President, I note the presence of no other Senator on the floor. Therefore, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. NICKLES. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

THE CLINTON ADMINISTRATION

Mr. NICKLES. Mr. President, yesterday marks the first 2 weeks of President Clinton's administration. I can tell you, this Senator and as an American, I have been disappointed in his first 2 weeks.

I would also say that I seriously question his priorities for our country. I say his priorities, because I am looking at what he has done the first couple of weeks. I would like to express my displeasure on several different issues, including the legislation that we have before us.

One of the first actions President Clinton made were Executive orders dealing with abortion. One of those orders will make abortion more available in military hospitals. Hospitals that are designed to protect lives now are licensed under this administration to take the lives of innocent children, unborn children. Another order dealt with family planning clinics. Except now, instead of these clinics being for family planning, they can now give advice on destroying unborn children's lives.

Also, within his first week, President Clinton issued an Executive order regarding the elimination of the ban on homosexuals serving in the military. There will probably be a vote on this issue if not today, probably tomorrow. Many people across the United States are opposed to this policy. In my office we have had thousands of calls in opposition to President Clinton's actions. President Clinton was changing this policy without consulting Congress and without consulting the military leaders, who are almost unanimous in their opposition; and without really considering the impact it would have on the military, the impact on our readiness, the impact on our ability to be able to perform our duties in protecting our country.

I think that was a serious mistake. There has been a lot of discussion on that, and I am sure we will hear more discussion when we have that amendment ahead of us.

The President took the actions I have just mentioned unilaterally. He took them in advance of an economic agenda. He took them in advance of an agenda to reduce the deficit, to improve health care, or reduce the health care costs. So I question his priorities.

Those were the first things the President did in his first week. As a matter of fact, when we talk about deficit reduction, he made a campaign promise or pledge time and time again that he was going to cut the deficit in half. And yet, in his first week in office, he moved away from that promise

I read his statements. I saw him make the statements on TV: We are going to cut the deficit in one-half.

Now, it is a moving target. Now, I read in the paper, we are going to put that off for the first year or so. We will work on that in the long term. But the facts are, they have moved away from that promise. And I think it happens to be one of the ones which needs to be carried out.

The President is complying with his promises or pledges to some special-interest groups, to the homosexual activists. Yes, he is complying with that promise to the unions. I will touch on a couple of promises he is making to them. He is carrying forth to the abortion rights activists. But to the American taxpayers, to the people to whom he said he wanted to cut the deficit in half, he has backed away.

As a matter of fact, one of the first items the President did in his first week was to move away from the deficit reduction targets. He could have used those targets, the idea of having a sequester—which I believe would have been about $22 billion in this year, and an additional $40-some billion in the next year—he could have used that as leverage over Congress to make sure we got some cuts. Congress, you do not make these cuts, and we will have automatic cuts go forward. That was great leverage.

He said no; we will not abide by those targets. He will waive the deficit reduction targets. So basically, he told taxpayers: The promise I made to you, I was not really too serious about. To the middle-income taxpayers, whom he promised a tax cut, now we find him totally backing away from that.

I am going to talk about business issues, because I happen to be a businessman, prior to coming to the Senate, and I still have a business interest. Several of the initiatives he made this last week are very counterproductive to small business. I happen to be one.

The Council on Competitiveness was one of the few organizations in Government that actually would try to make sure that rules and regulations that came out of the executive branch from the regulatory agencies would make sense, that they would have some balance; that they would have some balance between jobs and the impact on the economy and various rules and regulations. President Clinton eliminated the council competitiveness.

Then, just in the last couple of days, the President issued two executive orders aimed at hurting business. President Clinton rescinded an Executive order that President Bush had signed which prohibited Government agencies from requiring or permitting union only. President Clinton's Executive order reestablishes the practice of discriminating against open shop or nonunion contractors. In other words: If you are nonunion, you need not apply; you do not quality if it is a Federal or federally funded contract.

I think that is an outrage. I think it is outlandish. We have 80 percent of the American work force today which is nonunion, and we are telling them, a lot of Federal construction projects which represents about 40 percent of all construction work nationwide. You need not apply; you do not qualify. Not to mention the fact that it is a rip-off on taxpayers. It will cost a lot more. It will cost jobs. It is going to have a negative impact on the economy. It is going to drive up the cost of a lot of construction projects.

The President did it anyway. Why? Because he had made promises to organized labor, and he is carrying out those promises.

He also signed an executive order rescinding an Executive order that was signed by President Bush that would notify employees of their rights not to contribute to unions for political purposes under the Beck decision.

The order issued by President Bush protected the rights of workers. They should not be compelled to contribute to political organizations or activities of the union, if they did not want to. They have a right to decline to do that. President Bush signed an Executive order notifying the employees of that right. President Clinton took that notification away.

President Clinton does not want the employee to know of his rights. He wants the employee to continue making these contributions to organized labor, mainly because they gave him a lot of money. That is an outrage.

He made promises to the pro-abortion groups. Yes, he carried out those. He made promises to the gay rights groups. Yes, he carried forth on those. He made promises to the union bosses. He carried those out. He made promises to the taxpayer and said, "We are going to cut the deficit in half." He is already backing away. He made promises to the middle-income taxpayers: "We are going to cut your taxes." He backed away. As a matter of fact, now instead of backing away, they are talking about "We are going to increase taxes. We are looking at more and

more ways to increase taxes on working Americans."

Whether you are talking about energy taxes or whether you are talking about taxing Social Security, there are more and more ways to spend money. But we do not hear very much about ways to cut spending. I think that is the common thread we will be finding. I am not trying to prejudge. I am saying just look at the actions taken in the last 2 weeks, and you find a lot of actions that have been very detrimental to taxpayers and very detrimental to small business, very detrimental to people who want to build and expand and employ and make our economy grow. Is it not interesting to note that the first legislative item that we have on the floor of the Senate is a mandate on business?

The so-called parental leave bill is a mandate; it is a hit on business. I do not know if my colleagues have read the bill. Everybody has talked about how great of a bill it is. I encourage them to read it. It is fairly simple, as far as the legislation goes on the Federal side. It is not as complicated as some, but it is 56 pages. I can tell you, as part owner of a business, most businesses are not looking for more regulation. This little bill is 56 pages. Several pages are telling business what to do and how to do it, and if you do not, there is a heavy fine, penalty, or suit.

Incidentally, although this bill is only 56 pages, the regulations to implement the bill will be in the hundreds of pages. The final regulations to comply with the bill we are going to pass—come out from the Department of Labor, they will be in the hundreds of pages—hundreds, not 100, at least a couple hundred pages. They will be telling businesses that if you do not do this, this, and this, you are going to be subjected to fines, penalties, back wages, litigation costs, et cetera.

Most business people are going to be saying: Thank you very much, that is exactly what I did not need. Are we going to tell businesses to provide time off for a sick child or relative? That is what this bill does. Frankly, most businesses will do that without the Federal Government telling them to do it. I have owned and operated businesses that have had a significant number of employees, and also businesses that only had a handful of employees. But I always gave my employees time off if they had a sick child or relative. I did not need the Federal Government to mandate it.

Some say it will not cost anything, because we do not mandate that the time off be paid. I will tell you that it will cost a lot. I also say that all of the estimates that I have heard that, well, it is only going to cost a few dollars per employee, only a little bit per hour, and they are underestimating the cost and impact of complying with the so called Family and Medical Leave Act of 1993. They are underestimating it by a big amount. Maybe you have not been able to put yourself in the shoes of an employer that is trying to comply with Federal rules and regulations. This bill is going to end up mandating that an employer post notification, to say we want you to provide time off for a child or for a parent, for a spouse, and it will define those terms, and those are going to have to be notified.

Most employers already do that. I know as the presiding officer of a business, and I venture to say that most businesses offer family and medical leave. As I have stated, most businesses do it anyway—many offering paid leave. I know in my company, we offer paid maternal leave and paid disability, and we do not need the Federal Government to tell us to do this. And, frankly, we have a great deal of flexibility. I am going to tell you that when people say this act is for the employee, they are wrong, this is going to hurt employees. The reason why it is going to hurt them is because a lot of employers right now have some flexibility in their disability plans or some flexibility in their maternal leave plan, or in their sick leave plans, where they allow employees time for when they are sick, or they allow the employee to have time off if their spouse or a relative is sick. They may not have it in writing, they may not have it in concrete, but right now this will tell them you better get it in writing and orchestrate it like this, and a lot of employers are going to define their policy just like this.

It will take away that flexibility, take away the flexibility of benefits as designed and orchestrated between employer and employee. I can tell you that when I was working our wage and benefit packages, I would talk to employees and say, "What do you want? How can we best orchestrate a package mutually beneficial to the company and to the employees?"

I will tell you, our employees were not asking for a Family and Medical Leave Act. They were asking for dental benefits, or they were asking for better health care for another day off, or they were asking for flex time where we would allow them to have weekends.

You know, a lot of companies say, "We will give you a couple weeks off," or 4 weeks, depending on your seniority. A lot of people say: We would like to be able to work this out. We want to have more time off for our families. This mandating and orchestrating a benefit as designed by Congress, instead of by employers and employees, will be less beneficial. This package is not offered by most employers as designed by Congress, but most employers already offer it; and in many cases, they are more generous than this, but not exactly designed like this; and now they are going to have to come in and design it exactly as Congress has designated, because I will tell you almost every employer does not offer paternal leave. For example, if you have a male employee, and his father-in-law is sick, they do not offer a benefit that says you can have 3 months off, and we will continue your health insurance, and yet you can pick up the same position. I am going to tell you that is not in anybody's health benefit package right now or fringe benefit package. It is just not there.

The reason why it is not, most people do not want it. Congress is going to dictate it, and most people have not asked for that. Most people can modify their plans, but that is going to cause confusion. It is going to cause confusion in our little company, because we offer paid disability. We offer time off for people if they are sick or something; we give them that time off, or we have generous vacations or something.

Now we are going to have something different, time off without pay, for fathers-in-law or mothers-in-law, or for other relatives, which right now is not in the package. Wait a minute, we have paid leave for some and nonpaid, now mandated by the Government. Are we going to strike out other package so we can add this to it? Are we going to have to coordinate the two? One paid, one unpaid? Maybe some people had a package that goes for several months of disability time or sick leave time, and now we have the Federal Government coming in saying, well, this is what we are going to mandate, and you have to offer this.

It is going to be very confusing. It means, in my opinion, probably anybody that has a contract—anybody—is going to have to go in and modify those contracts to be in compliance.

It is going to require almost every contract in America to be renegotiated. It is going to require those who do not have contracts but yet have some kind of written policy to rewrite those policies to be in compliance.

Again, many places, instead of designing benefits with flexibilities—and I am talking about businesses where you have employers that know their employees, they know if they have a good employee; in many cases they do not have anything written down, but they know their employees and they know if a certain employee says, "I have a sick child," they say, "Fine," and there are no questions asked.

This little piece of legislation easily can be very adversarial where employers are going to feel like, well, I need to protect myself. Maybe we should always require, if somebody says they have a sick child and want some time off, we better make sure a doctor says, yes, in that circumstance because, if we are going to do it for one man, we better do it for all. If we have to do it for some, maybe we better do it for all.

You can see how easily an adversarial relationship can exist between em-

ployers and employees that never existed before to provide a benefit that, frankly, most employers were providing for their employees anyway.

I am not saying there are not some bad apples out there. I am not saying there are not some employers that have not offered time off when they should have. Frankly, I want to tell you something about that kind of employer. Those are the type of employers that will not survive.

I will also tell you there are a lot of good employers out there right now that are struggling to survive, that are having a hard time.

I am glad to see the economy in the last quarter really had a nice growth. Leading economic indicators are way up, a 10-year high. That is great. I am delighted.

I want our economy to grow. I do not care who the President is. I want more people employed. I do not care who gets credit. I want this country to grow and build and expand and produce. But I am going to tell you something. This legislation will hurt the economy. It certainly will not help it. It is one of these added burdens, expenses, mandates that will cost some jobs, that will be an additional burden.

I know from personal experience in this little company I have mentioned before that is going through some real hard times right now, the last thing they need is more Federal mandates, more dictates coming from Uncle Sam. I have had countless of my constituents writing me, talking to me saying, "Please let us make it easier for business to survive so we can grow and build and expand, not make it more difficult."

You make it difficult for business in many cases through excessive regulation, such as the family leave bill, a mandate, and also through excessive taxation. And now employees are hearing that they are going to get stuck with both by the new administration.

Let me just give you a couple of examples of letters—and I will submit these for the RECORD. I have a letter from the W.B. Johnson Co. in Enid, OK. he says:

At the present time we have a company policy that takes care of employees' needs such as this, and in doing so, we do not have to hire someone to take their place.

It goes on. He says:

Leave to attend to family matters is fine and it is an excellent employee benefit for those who need it and want it, and we provide it. However, I find that some employees do not require such leave and many prefer higher pay rates, more vacation time, etc. For the federal government to mandate leave means that we will be obligated to obey the law and offer our employees such leave. If this passes, I fear it will force us to reconsider the remainder of the benefit package we offer employees, even to the extent that we may have to withdraw some of these benefits due to the federal leave requirement.

I also have another letter that is from the Daily Oklahoman. I will just read one paragraph of that letter.

I felt, and still do feel, that employers, not the federal government, are best situated to know the benefits preference of their own employees. Businesses have traditionally worked to tailor leave requirements to the needs of their employees and any federal initiative that removes or restricts the flexibility of an employer in shaping such leave benefits tends to work against employees themselves.

And one final one, and this is from Shawnee Garment Manufacturing Co. It says:

We have been hiring and expanding but now I will have to cut off my employment level under 50 to escape this bill.

I try to be flexible with leave but this bill is open to heavy abuse. Especially the opportunity for intermittent leave could destroy any attendance system we have. How can we run an assembly line with people taking leave any time they want?

Mr. President, I ask unanimous consent that these letters be printed in the RECORD at this point.

There being no objection, the letters were ordered to printing in the RECORD, as follows:

W.B. JOHNSTON GRAIN CO.,
Enid, OK, January 25, 1993.

Hon. DON NICKLES,
U.S. Senate, Washington, DC.

DEAR DON: I have learned that Congress will be taking action on the mandatory leave bill within the next few days. I believe that I have written you in the past concerning my opposition to the federal government mandating twelve weeks unpaid leave for employees every year, for those who have worked 1,250 hours during the previous year.

At the present time, we have a company policy that takes care of employees' needs such as this, and in doing so, we do not have to hire someone to take their place. If we are required by law to give 120 days unpaid leave, and they use 120 days, we would have to hire somebody to do their job. When the original employee returns to work, we would have to fire the temporary replacement, who then would file on us for Unemployment Compensation.

Leave to attend to family matters is fine and it is an excellent employee benefit for those who need it and want it, and we provide it. However, I find that some employees do not require such leave and many prefer higher pay rates, more vacation time, etc. For the federal government to mandate leave means that we will be obligated to obey the law and offer our employees such leave. If this passes, I fear it will force us to reconsider the remainder of the benefit package we offer employees, even to the extent that we may have to withdraw some of these benefits due to federal leave requirement.

I truly feel that most employers will make arrangements for the employees who need this type of leave without the federal government mandating it.

I urge you to carefully consider the likely consequence of this federal requirement and to oppose mandated leave. I eagerly await your responce.

Sincerely,

LEW MEIBERGEN.

THE DAILY OKLAHOMAN,
Oklahoma City, OK, February 1, 1993.

Hon. DON NICKLES,
U.S. Senate, Washington, DC.

DEAR SENATOR NICKLES: The Congress is soon expected to consider family and medical leave legislation. I felt, and still do feel, that employers, not the federal government, are best situated to know the benefits preference of their own employees. Businesses have traditionally worked to tailor leave requirements to the needs of their employees and any federal initiative that removes or restricts the flexibility of an employer in shaping such leave benefits tends to work against employees themselves.

However, it appears that with the change of administration this legislation is likely to become law. As a Human Resource Manager for The Oklahoma Publishing Company in Oklahoma City and the person who will be charged with the proper and cost effective administration of this new requirement, I have some practical and administrative concerns with the legislation that I urge you to address.

The legislation would permit employees to take intermittent leave (an hour or a day at a time). With no enforceable notice requirement, this provision presents tremendous administrative and operational difficulties for employers.

As previously drafted, the Family and Medical Leave Act would do nothing to eliminate the confusion already created by a complex patchwork of state family leave statutes. The bill would not provide for a national uniform standard. In cases where existing state and new federal family and medical leave requirements conflict, employers would be uncertain over which provisions of which law would take precedence. The proposal would create much confusion and difficulty in the administration of family leave policies. Multi-state employers would be unable to establish one nation-wide family and medical leave policy.

Serious health condition is not well defined in the current legislation and would encourage abuse. As drafted, any condition requiring "ongoing medical supervision" would qualify as serious. Regular visits to the orthodontist fall into this category. We urge you to tighten up the language so that only those employees who are seriously ill or are taking care of seriously ill family members are entitled to the requirements of the bill.

While an employer is required under the bill to continue health insurance for the duration of the leave period and hold the job open for the employee, the bill does not contain any incentive for an employee to be forthright about their intention to return after taking the leave. As a result, the employer might hold the job open and continue health benefits for the 12-week period only to learn that the employee has decided not to return to work. An incentive for employees to be forthright about their intention to return to work would alleviate such operational problems and would enable employers to begin to recruit for the open position.

Additionally, although the legislation requires employers to provide unpaid leave, under the Fair Labor Standards Act (FLSA), private employers are prohibited from docking the pay of an exempt employee for partial day absences. Accordingly, to comply with the FLSA, leave taken under the Family and Medical Leave Act on an intermittent basis would be required to be paid leave for employees exempt under the FLSA. Hourly, or non-exempt employees would not

be entitled to be paid. Therefore, I urge you to amend family leave legislation to permit employers to dock an employee's pay for partial day absences, where the employee has exhausted their available leave.

I urge you to address these provisions in order to reduce confusion and difficulty in the administration of the Family and Medical Leave Act before it becomes enacted.

Sincerely,

PATRICIA PODOLEC, SPHR
Manager, Human Resource Administration.

SHAWNEE GARMENT MFG. CO.,
Shawnee, OK, February 1, 1993.

Re: Parental Leave Legislation.

Senator DON NICKLES,
Hart Building, Washington, DC.

I am writing in opposition to mandated parental leave. This bill will create significant costs to us. Clothing manufacturing is a very competitive business especially with so many imports.

We have been hiring and expanding but now I will have to cut off my employment level under 50 to escape this bill.

I try to be flexible with leave but this bill is open to heavy abuse. Especially the opportunity for intermittent leave could destroy any attendance system we have. How can we run an assembly line with people taking leave any time they want?

Please work against this legislation.

Sincerely,

JIM ANTOSH,
President.

Mr. NICKLES. Mr. President, for those that have looked at this and said, well, it is not going to be that much of a burden on employers, it is not going to have a real negative impact on the economy, it is marginal in its impact, I hope they look at section 105 and section 107.

Prohibited acts. I will just read a couple of these. This is under section 105(a):

(1) EXERCISE OF RIGHTS.—It shall be unlawful for any employer to interfere with, restrain, or deny the exercise of or the attempt to exercise, any right provided under this title.

(2) DISCRIMINATION.—It shall be unlawful for any employer to discharge or in any other manner discriminate against any individual for opposing any practice made unlawful by this title.

(b) INTERFERENCE WITH PROCEEDINGS OR INQUIRIES.—It shall be unlawful for any person to discharge or in any other manner discriminate against any individual because such individual—

And on and on and on.

A little obligation to keep records:

Any employer shall make, keep, and preserve records pertaining to compliance with this title in accordance with section 11(c) of the Fair Labor Standards Act * * * and in accordance with regulations issued by the Secretary.

A little paperwork requirement: Well, we are just talking about employers with over 50 employees. Let us say an employer has 75. That is about the size of Nickles Machine Corp. You are going to keep records on every employee. I already have records. Maybe that is not such a big thing. I will wait. We are allowing people to take leave. We allow some of that leave to be with pay. Now we are going to have some leave that is maybe not with pay. We have some people that have vacations. Is it going to be coordinated with vacations? Is it going to be coordinated with existing disability benefits already offered? Does it really make much sense? And are we going to make those times run concurrently or not run concurrently? Are we going to keep all the records? It is not going to be that easy.

And then section 107, enforcement; civil action by the employee. A right of action may be:

maintained against any employer (including a public agency) and any Federal or State court of competent jurisdiction by any one or more employees for and in behalf of (A) the employees, or (B) the employees similarly situated.

You not only can take action on behalf of these aggrieved employees that said:

You did not allow me to have time off because my father-in-law was ill. My spouse was with my father-in-law, but I still like needed 3 months off to be with my father-in-law and you would not allow me off, so I am going to take action against you and I am going to sue you for double damages and legal expenses, court fees, attorney fees.

It also says not just for the employee, but also other employees; in other words, a class-action suit. This bill is inviting class-action suits. So, if an employer for some reason did not formulate a formal policy, if he did not make an action, you can have an aggrieved employee file a class action suit on behalf of all employees in that class and, quite frankly, you could be talking about very significant penalties and damages and expenses which could bankrupt an employer.

The net result could cost a lot of employees their jobs. And I am not sure people are aware of that.

When I talk about fees and costs, under section 107 it says:

The court, in such an action shall, in addition to any judgment awarded to the plaintiff—

That could be for back wages and basically double wages—

allow reasonable attorney's fees, reasonable expert witness fees, and other costs be paid for by the defendant.

What I am saying by all these actions that can be taken by the plaintiff, by the disgruntled employee, that the employers are liable for all the wages, for all the legal fees, you could easily have a very adversarial relationship just with the threat of a suit if you do not do this; or, if you do not do this, we are going to institute legal action and an employer is liable for all of it, and, instead of having the employers and employees working together hand in hand moving together working together, you could have an adversarial type relationship, and that is not healthy.

I know that is not the sponsors' intention, but I will tell you, when you get into a class-action suit, when you get into a grievance—and we would like to think that is not going to happen, but I will tell you it will happen.

Again, I am not trying to defend every employer in America because I know there are some employers that make some mistakes. I know we have some bad apples. But I will also say that those are not the ones that are going to survive. This is not an easy climate in this day and age where you are competing not only in this country but you are competing internationally. In the long run, if businesses are going to be successful they are going to have good employer-employee relationships. If they have any real intelligence they are going to be defining their fringe benefit plans to be mutually acceptable and agreeable with employers and employees, designed for the mutual benefit of employers and employees. Not to the exclusion or not to the detriment of employees, not in an adversarial relationship, but in a positive relationship. And I fear that this legislation will be another hit, another negative on some of those businesses that are struggling to survive.

I will just maybe make another example. You could have a skilled machinist who has a spouse who is able to take care of her mother who maybe is chronically ill, and maybe she spends a great deal of her time taking care of her chronically ill mother. You are going to tell that employer that the employee can also take off 120 days. If the production line demand is there, you may not have a replacement.

Some people act like we will just have a replacement and there will be no cost except for the cost of the temporary employee. You may have one person trained for that position. Maybe that is not good management but maybe that happens to be the situation you are in.

There is a lot of potential for negative action as a result of this bill. I know that is not the author's intention. And, again, I respect Senator DODD for his persistence in going through this legislation for the last few years—7 years—through two vetoes. I respect that. I do not happen to agree with the result.

I have mentioned this bill as part of a sequence of several other things that the Clinton administration has already done that I see as a detriment to business. I find it somewhat ironic that President Clinton, in issuing his Executive order on February 1, said he wanted to help the economy and business.

I will just read his statement issued with the February 1 Executive order. He said:

I believe that these steps, by reducing unnecessary Federal Government intrusion into workplace regulations, ultimately will promote the shared goals of American workers and management and strengthen the ability of this country's businesses and industry to compete in the world economy.

If he is interested in reducing unnecessary Federal intrusion he should veto

this bill because this bill is unnecessary Federal intrusion. Most businesses that are worth their salt are going to give good employees time off to take care of sick relatives. And they do not need the Federal Government to dictate it, to mandate it.

So I mention that with the realization that the Clinton administration made two Executive orders on February 1 that in my opinion are detrimental to businesses. If you happen to be nonunion they are very detrimental to business.

Why in the world are we only concerned about union business? That is only 20 percent of the work force. What about the 80 percent that is not? What about giving nonunion employers, many of which are much smaller employers, what about giving them a chance to compete? He signs an Executive order that says if you are nonunion, you need not apply. You cannot apply. You will not be accepted. Is that American? Is that free enterprise? It is just the opposite.

Then he eliminates the Council on Competitiveness. Then he eliminates his objective to reduce the deficit by half. Now he is talking about more business taxes. He says we are just going to tax the wealthy, just going to sock it to the people who make over $200,000. That is what he says. Then we hear talk about energy taxes. I think everybody I know who is 16 and older is driving a car. Those are energy taxes. They are not all making over $200,000 a year. Or people paying their fuel oil bills or people who are flying in an airplane—those people are all consuming energy. He is talking abut raising their taxes.

I find the first 2 weeks very disappointing in the Clinton administration. I hope we will see better in the next 3 years and 50 weeks that we have left.

I yield the floor.

The PRESIDING OFFICER. The Chair recognizes the Senator from Connecticut.

Mr. DODD. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. DODD. Mr. President, Senator DANFORTH of Missouri is about to propose an amendment. I ask unanimous consent that Senator DANFORTH be recognized to offer such an amendment, on which there be 30 minutes for debate with the time equally divided and controlled in the usual form; that no other amendments or motions, other than a motion to table, be in order prior to the disposition of the Danforth amendment; and that when all time is used or yielded back, the Senate vote on or in relation to Senator DANFORTH's amendment.

Mr. DANFORTH. Mr. President, I object.

The PRESIDING OFFICER. Objection is heard.

Mr. DANFORTH. Mr. President, I withdraw my objection.

Mr. DODD. I would renew my unanimous-consent request.

The PRESIDING OFFICER. Without objection, it is so ordered.

AMENDMENT NO. 14

(Purpose: to encourage mediation of complaints filed with respect to family and medical leave)

Mr. DANFORTH. Mr. President, on behalf of myself and Senator DURENBERGER, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report the amendment.

The assistant legislative clerk read as follows:

The Senator from Missouri, Mr. DANFORTH, for himself and Mr. DURENBERGER, proposes an amendment numbered 14.

Mr. DANFORTH. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 24, line 19, strike "107(b)" and insert "107(c)".

On page 27, line 10, strike "(d)" and insert "(e)".

On page 27, line 17, strike "(b)" and insert "(c)".

On page 27, between lines 24 and 25, insert the following:

(b) MEDIATION.—

(1) FINDING.—Congress finds that cooperative mediation of complaints is a more time-saving and cost-effective method of resolving disputes than litigation of civil actions.

(2) INITIATION OF MEDIATION IN ACTION BROUGHT BY SECRETARY.—

(A) NOTICE OF ACTION AND AVAILABILITY OF MEDIATION.—

(i) NOTICE.—If the Secretary determines that there is reasonable cause to believe that an employer has violated this title and that the Secretary will file an action against the employer under subsection (c) or (e), the Secretary shall inform—

(I) the employer that the employer may, within 7 days, request that the complaint be referred to the Service for mediation; and

(II) the employee aggrieved by the violation, and the employer, that the employee may become a party to mediation under this paragraph.

(ii) LIMITATION ON ACTION.—The Secretary shall not file such an action earlier than 7 days after the date on which the employer is so informed.

(B) REFERRAL AND NOTIFICATION.—

(i) REFERRAL TO MEDIATOR OTHER THAN THE SERVICE.—In lieu of receiving mediation services from the Service, the Secretary and the employer (and the employee, if the employee elects to become a party) may agree in writing to refer the complaint to a mediator (other than the Service) that has been mutually agreed to by the parties, for mediation in accordance with regulations promulgated by the Service pursuant to this subsection. A copy of the agreement to mediate shall be served upon the Service and the employee.

(ii) NOTIFICATION OF COSTS, FEES, AND EXPENSES.—Before the commencement of mediation services under this subparagraph, the mediator shall notify the parties and the Service in writing of the per diem costs and any other fees and expenses the mediator may reasonably be expected to incur in providing such services. The cost of mediation services shall be shared as mutually agreed by the parties.

(C) PROHIBITION ON FILING OF ACTION.—

(i) IN GENERAL.—The Service, within 7 days of receipt of the mediation request, shall inform the employee that mediation has been requested. If the employer requests mediation by the Service under subparagraph (A) or agrees to mediation by a mediator under subparagraph (B), the Secretary may not file an action against the employer under subsection (c) or (e), and the employee may not file an action against the employer under subsection (a)(2), until the completion of the mediation.

(ii) INJUNCTIVE RELIEF.—Nothing in this subsection shall prevent the Secretary from filing an action under subsection (e), or the employee from filing an action under subsection (a)(2), with respect to any claim for temporary injunctive relief.

(iii) LIMITATIONS.—If—

(I) the time for the Secretary or the employee to file an action described in clause (i) would otherwise lapse during the 7-day period described in subparagraph (A);

(II) the employer does not request mediation by the Service under subparagraph (A); and

(III) the parties do not agree to mediation by a mediator under subparagraph (B),

the time for the Secretary or the employee to file such an action shall be tolled until 7 days after the end of the period.

(3) INITIATION OF MEDIATION.—

(A) NOTICE OF ACTION AND AVAILABILITY OF MEDIATION.—No employee shall bring a civil action against an employer under subsection (a)(2) unless the employee has given the employer at least 7 days written notice that the employee intends to file such action and informed the employer that either party may request that the complaint be referred to the Service for mediation pursuant to the procedures set forth in this subsection.

(B) REFERRAL AND NOTIFICATION.—

(i) REFERRAL TO MEDIATOR OTHER THAN THE SERVICE.—In lieu of receiving mediation services from the Service, the employer and the employee may agree in writing to refer the complaint to a mediator (other than the Service) that has been mutually agreed to by the parties, for mediation in accordance with regulations promulgated by the Service pursuant to this subsection. A copy of the agreement to mediate shall be served upon the Service and the Secretary.

(ii) NOTIFICATION OF COSTS, FEES, AND EXPENSES.—Before the commencement of mediation services under this subparagraph, the mediator shall notify the parties and the Service in writing of the per diem costs and any other fees and expenses the mediator may reasonably be expected to incur in providing such services. The cost of mediation services shall be borne by the party that requested the mediation, unless the parties mutually agree to share the costs.

(C) PROHIBITION ON FILING OF ACTION.—

(i) IN GENERAL.—The Service, within 7 days of receipt of the mediation request, shall inform the Secretary that mediation has been requested. If either party requests mediation by the Service under subparagraph (A), or if the parties agree to mediation by a mediator under subparagraph (B), the Secretary may not file an action against the employer under subsection (c) or (e), and the employee

may not file a civil action against the employer under subsection (a)(2), until the completion of the mediation.

(ii) INJUNCTIVE RELIEF.—Nothing in this subsection shall prevent the Secretary from filing an action under subsection (e), or the employee from filing a civil action under subsection (a)(2), with respect to any claim for temporary injunctive relief.

(iii) LIMITATIONS.—If—

(I) the time for the Secretary or the employee to file an action described in clause (i) would otherwise lapse during the 7-day period described in subparagraph (A);

(II) neither party requests mediation by the Service under subparagraph (A); and

(III) the parties do not agree to mediation by a mediator under subparagraph (B),

the time for the Secretary or the employee to file such an action shall be tolled until 7 days after the end of the period.

(4) REGULATIONS.—

(A) ISSUANCE, AMENDMENT, AND RESCISSION.—After providing an opportunity for public comment, the Service shall issue, and may amend or rescind, regulations to carry out the provisions of this subsection relating to mediation of complaints. The Service shall issue the regulations not later than 6 months after the date of enactment of this subsection.

(B) MEDIATION IN ACCORDANCE WITH REGULATIONS.—Mediation provided by the Service under subparagraph (A), or by another mediator under subparagraph (B), of paragraph (2) or (3), shall be provided in accordance with the regulations.

(C) MEDIATION SERVICES.—The regulations shall specify the form and manner of, and the procedures for providing, the mediation services provided under this subsection.

(5) DUTY OF MEDIATOR.—It shall be the duty of the mediator to communicate promptly with the parties and use best efforts, by mediation, to reach an agreement resolving the complaint.

(6) REPRESENTATIVE.—During mediation, the employee and the employer may be represented by legal counsel or another representative of their choice.

(7) RESOLUTION.—

(A) MANNER.—If the complaint is resolved through mediation, the complaint shall be resolved in a manner that is mutually agreeable to the parties, including a settlement agreement or voluntary withdrawal of the complaint (by the employee or the Secretary, as appropriate). The resolution of the complaint shall be recorded in writing. In no case shall the mediator have the power to dismiss a complaint.

(B) EFFECT OF AGREEMENT ON RESOLUTION.—

(i) MEDIATION BETWEEN EMPLOYER AND EMPLOYEE.—Once the employee and employer have agreed on a resolution of the complaint following mediation initiated under paragraph (3), the mediator shall so advise the Secretary. The Secretary shall take no further action on the matter that is the subject of the mediation as the matter affects the employee or employees.

(ii) MEDIATION INVOLVING THE SECRETARY.—Once the parties have agreed on a resolution of the complaint following mediation initiated under paragraph (2), the mediator shall so advise the employee, unless the employee is a party to the mediation. No employee may bring an action under subsection (a)(2) after the parties have recorded such a resolution.

(8) COMPLETED MEDIATION.—

(A) RESOLVED COMPLAINT.—The mediation shall be deemed to be completed on the date that the resolution of the complaint is recorded, as provided for in paragraph (7)(A).

(B) UNRESOLVED COMPLAINT.—If a complaint that has been referred to mediation has not been resolved by settlement, withdrawal of complaints, or otherwise within 45 days of receipt of the complaint by the Service or other mediator, and the parties do not agree in writing, with the consent of the mediator, to further extend the mediation process, the mediation shall be deemed to be completed.

(9) CIVIL ACTIONS FOLLOWING MEDIATION.—

(A) RIGHT TO BRING ACTION.—If mediation has been completed without resolution, as described in paragraph (8)(B), the employee may file a civil action under subsection (a)(2), or the Secretary may file an action under subsection (c) or (e).

(B) LIMITATIONS.—If—

(i) mediation is initiated under paragraph (2) or (3); and

(ii) the time for the employee or the Secretary to file an action described in subparagraph (A) would otherwise lapse—

(I) not earlier than the first day of the 7-day period described in paragraph (2)(A) or (3)(A), as appropriate; and

(II) not later than the completion of the mediation,

the time for the employee or Secretary, as appropriate, to file such an action shall be tolled until 7 days after the completion of the mediation (including any referral under subparagraph (C)).

(C) REFERRAL FOR ADDITIONAL MEDIATION.—The court in which the action is filed shall have the discretion to refer the complaint to the Service or the other mediator used by the parties for an additional 30 days of mediation pursuant to this subsection.

(D) CONSTRUCTION.—Nothing in this subsection shall be construed to limit the authority of the court to attempt to resolve the case under the authority of the court or dispute resolution procedures established by the court.

(10) AGREEMENTS.—

(A) AGREEMENT INVOLVING SECRETARY.—The employee shall be provided a copy of any settlement agreement, or other agreement resolving the complaint, between the parties after mediation initiated under paragraph (2). Any such agreement shall be kept confidential by the mediator, the employer, the employee, and other parties to the agreement unless all parties agree otherwise in writing.

(B) AGREEMENT BETWEEN EMPLOYEE AND EMPLOYER.—Any settlement agreement, or other agreement resolving the complaint, between the employee and the employer after mediation initiated under paragraph (3) shall be considered confidential and shall not be provided to the Service, the Secretary, or any other person, unless all parties to the mediation so agree in writing.

(11) COMMUNICATIONS.—

(A) CONFIDENTIALITY.—Whether or not a complaint that has been referred to mediation is resolved, all communications, oral or written (including memoranda, work product, transcripts, notes, or other materials), made by the Secretary, the employee, the employer, or the mediator in or in connection with the mediation that relate to the controversy being mediated shall be kept confidential by the participants in the mediation.

(B) PROHIBITION ON MAKING COMMUNICATIONS AVAILABLE.—Such communications shall not be made available by the mediator, or parties to the mediation, to any person not participating in the mediation, including the Secretary in any case in which the Secretary is not a participant.

(C) PROHIBITION ON USE OF COMMUNICATIONS AS EVIDENCE.—Such communications may not be used as evidence in any other proceeding, as provided for in paragraph (12).

(D) FINE.—Any person, including any official of the Department of Labor, who discloses information in violation of this subsection shall be fined not more than $5,000.

(12) DISCLOSURE.—

(A) IN GENERAL.—Communications referred to in paragraph (11), shall not be disclosed voluntarily, and, pursuant to this subsection, shall not be subject to disclosure through discovery or compulsory process in any investigatory, arbitral, judicial, administrative or other proceedings, unless—

(i) all parties to the mediation agree, in writing, to waive the confidentiality of such communications; or

(ii) the communications involve statements, materials, and other tangible evidence, that—

(I) are otherwise not privileged and subject to discovery; and

(II) were not prepared specifically for use in mediation.

(B) DEMAND FOR DISCLOSURE.—If any demand for disclosure, including a request pursuant to discovery or other legal process, is made upon the mediator, the Service, or the Secretary, regarding the mediation of a complaint, the mediator, the Service, or the Secretary, as appropriate, shall immediately make reasonable efforts to notify all parties to the mediation of the demand.

(13) ACTION FOR ENFORCEMENT.—A party to an agreement made pursuant to mediation under this subsection may bring any action to enforce the agreement in any Federal or State court of competent jurisdiction.

(14) DEFINITION.—As used in this subsection, the term "Service" means the Federal Mediation and Conciliation Service.

(15) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as may be necessary to carry out the purposes of this subsection for fiscal year 1994 and each subsequent fiscal year.

On page 27, line 25, strike "(b)" and insert "(c)".

On page 28, line 20, strike "(c)" and insert "(d)".

On page 29, line 11, strike "(d)" and insert "(e)".

On page 29, line 22, strike "(e)" and insert "(f)".

Mr. DANFORTH. Mr. President, earlier today by a close vote the Senate rejected an amendment that was offered by Senator GRASSLEY and Senator DURENBERGER relating to arbitration.

This amendment is somewhat different and simpler than the Grassley-Durenberger amendment but it is designed to accomplish the objective of trying to resolve as many cases as possible without full-blown litigation. As opposed to arbitration which was provided for in the Grassley amendment, this amendment provides for mediation. Mediation is different from arbitration in that arbitration is related to formal litigation. In fact, under the Grassley amendment, before arbitration could commence, litigation would have to commence.

So once a case was in the formal process of litigation, an arbitrator,

under the Grassley amendment, would be appointed. The arbitrator would make findings. The proceedings under arbitration would be subject to motions, to discovery. The parties would be represented by attorneys.

Mediation is much different. Mediation is to provide that each of the parties, the employer and the employee, at the election of one of them, for a short period of time have the opportunity to work out their differences not in the format of litigation, not with attorneys, not with discovery, not with motions, but instead with a professional mediator in a very informal setting.

So the amendment that has just been offered says very simply that 7 days before litigation is commenced under this bill, the employee gives notice to the employer, or the Labor Department gives notice to the employer, that mediation is an option. And if either party asks for mediation, then either the Federal Mediation and Conciliation Service or some mutually agreed to mediator convenes the parties for a period not to exceed 45 days, a month and a half, of informal mediation in an effort to work matters out.

Now, I know that it is anticipated by the managers of the bill that not many cases will really go to trial. I think any cases are too many. I believe that the record of the Federal Mediation and Conciliation Service is excellent; that it is a pattern that should be followed; and that if it is the purpose of the underlying legislation to try to settle problems between employers and employees in an amicable way, this amendment provides a much greater possibility of working out real disputes amicably. Therefore, I offer this amendment.

Mr. DODD addressed the Chair.

The PRESIDING OFFICER. The Chair recognizes the Senator from Connecticut.

Mr. DODD. Mr. President, it is truly painful for this Member to disagree with the distinguished Senator from Missouri in light of the fact that going back some 7 or 8 years ago I joined with the Senator from Missouri in proposing a similar proposal in tort reform, a dual-track dispute resolution process, which, regretfully, we did not get very far with despite a valiant effort.

I am pleased to report that at least more recently efforts at tort reform seem to be gaining some momentum and we may actually achieve tort reform in this Congress. But my colleague from Missouri has anticipated my argument. This is a bit dissimilar to the amendment offered earlier by the Senators from Iowa and Minnesota but nonetheless fails to distinguish the fact situations that are presented with a normal tort matter which could end up in litigation almost immediately, and a process in which enforcement or litigation would be brought under the Fair Standards Act.

As I made the case earlier, I will make it here again. Were the enforcement procedures of the litigation processes in this legislation ones where a complainant would just file a complaint and end up in court, then I think the mediation proposal would have a lot of merit. But under the Fair Labor Standards Act it is not the way that works. Under the Fair Labor Standards Act, a complainant goes to the Department of Labor; the Wage and Hour Division then begins a conciliation or mediation process, in which they bring together the employer and the employee and they try and resolve the matter. If it fails at that level, it goes to a second level where a similar process is engaged in to resolve the matter without going to litigation. And then if that process fails entirely, of course litigation is possible.

Of the 74,000 cases, as I referred earlier, in 1990 that were brought under the Fair Labor Standards Act, there were some 2,081 cases where legal actions were actually brought. And of that 2,081 cases, some 600 actually ended up in litigation.

Now, I do not disagree with my colleague from Missouri that any time a case has to be brought in court, if there were other means of resolving it, that is regrettable. But I must say, Mr. President, when you go from 74,000 complaints to 600 court actions, that is a pretty good statistical result if you are striving to resolve these matters short of hiring the lawyers, getting involved in costly, lengthy litigation.

What my colleague has suggested here is yet one more layer, a mediation process, as if somehow the first two had not occurred at all under the Fair Labor Standards Act. In fact, what it may do is people sort of disregard or minimize the importance of going through the Wage and Hour Division of the Department of Labor if you know you are going to end up in mediation anyway.

It seems to me we can sort of get carried away here trying to pile on one conciliation process after another in the assumption somehow that the other ones are failing right and left and that only the one left that is being proposed here today can succeed. I know of no evidence which would indicate, for instance, that of those 74,000 cases which ended up with 600 going to court necessarily that number of 600 would have been reduced. Maybe it would be. I might argue we might have ended up with more because people may say, well, why am I going to go through the first two when I am going to end up with this one anyway.

So again, I do not question the motivations here. But it seems to be it is important for our colleagues to distinguish between a product liability case or a medical malpractice case or some other normal tort where there is no process, as the Senator from Missouri and I have advocated for many years, where there is some other way other than going to court of resolving those matters. Today there really is none except voluntary actions on the part of a plaintiff and the willingness of the defendant to sit down and resolve it. I hope we can get to a point where we can set up a conflict resolution process as a part of tort reform. Today there really is? But, under the Fair Labor Standards Act, we already have that process in place.

What is being suggested here is yet one more layer of it, one more effort, if you will. I suppose one could say, well, why not one more effort? But one of the complaints we have is the time it takes to resolve some of these matters. Complaints do come into our offices. They may have to do with a lack of personnel to handle the various complaints that get filed.

Of course, we have no idea whether or not there is even going to be a flood of complaints here. The assumption is on the part of those who are not in favor of the legislation this is going to create some tidal wave of legal actions. I doubt that. We heard that argument raised in the past when legislation has been proposed. In fact, in the Americans With Disabilities Act, there was a great concern raised about the mountain of litigation that would occur as a result of that legislation. I think it was so revealing that the Wall Street Journal a few weeks ago reported, in a survey of corporations and businesses that raised a real cry about the impact of the Americans With Disabilities Act, that in fact the act was working very well and they were having very few problems with it. No one who opposed that legislation would have predicted, I think, that sort of result in the surveys.

I think it is also worth noting there are some 30 jurisdictions, including local governments, which have adopted family and medical leave legislation in the country, about 7 States and a number of communities. The surveys done by the Chamber of Commerce and others about how well the acts at the local level are working is phenomenal, well into the 90 percent; 90 to 95 percent of the businesses surveyed have said in those jurisdictions where family and medical leave, as in my State, has been the law for several years, the reaction has been extremely positive, little or no cost, easy to implement, and working well.

The assumption somehow we are going to get this massive amount of litigation I do not think is well founded, particularly when you consider the fact the legislation or similar legislation has been on the books in other jurisdictions at other levels of government.

So, again, I commend my colleague's efforts in thinking to do what can be done in the area of tort reform and

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minimizing the cost of litigation involved in suits, but I urge my colleagues to reject this amendment because of the fact that under the present system——

I might point out as well, something I did not mention, when the amendment was raised by Senator GRASSLEY and Senator DURENBERGER, it was the business community that came to me and said, "Look, please don't set up a new enforcement mechanism here. Don't create any new agencies. Will you just take the Fair Labor Standards Act, make that your vehicle, don't fool around with it because we have worked with that for 50 years. We understand it. We have a knowledge of it. It has worked very well by and large. We have our complaints, but at least we are comfortable with that structure." So at their request, we, frankly, put that in because they asked us to.

With all due respect, when people come along now and want to amend the Fair Labor Standards Act, arguably to serve the interests of the business community, when it was the very business community which came to me and said, "Don't monkey with this," in a sense, what we are doing today is monkeying with that law. That is what the net effect here is, changing it.

Again, the results may turn out to minimize a number of those cases. But it seems to me when you have that kind of a track record, going from 74,000 cases down to 600 in court, that is a pretty good record of conciliation, mediation, call it what you will. That is a very fine record and ought to be duplicated in other areas. But I do not think a case can be made that it is not working and that yet one more level of mediation is necessary.

With all due respect, Mr. President, at the appropriate time, I will urge the defeat of this amendment. I reserve the remainder of my time.

Mr. DANFORTH. Mr. President, first of all, let me say I support the bill, I will vote for the bill. So this is not an effort to in any way weaken or destroy the bill.

The second point that I make is that I do not think there is any doubt that there is a litigation explosion in this country. All of us know that. Some people can say, well, that is a good thing, that keeps the lawyers busy. We have a surplus of lawyers with something to do. but for those who believe it is not a good thing, it seems to this Senator that anything we can do to reduce the number of cases in court we should do provided it is simple, provided we are not just bollixing things up by our efforts. We should try to simplify. We should try to get cases resolved amicably and out of court. That is the whole point.

Yes, 600 cases under one part of the law are not many. There are another couple of thousand under another way of instituting these cases. Twenty-six hundred lawsuits maybe is not a lot, but what is wrong with a month and a half of efforts under the auspices of a professional mediator, provided that the party who asks for the mediator pays for the mediation service, which is part of this amendment?

There are, under the law and under the law as it will be when this legislation is enacted, two ways in which an employee can institute proceedings. One is to go to court and file a lawsuit. That is the employee's right, not to go through the conciliation efforts of the Department of Labor, but simply to go right to the courthouse and file a lawsuit. That can be done by employees under the law that we are about to enact.

What we are saying is that in those cases the employee, 7 days before filing the lawsuit, simply has to provide notice to the employer of the possibility of mediation. The employer can say yes or no. If the employer says yes, the employer pays for the mediation, and there is a 45-day effort to try to work things out before the case proceeds.

If the employee, during that time, wants to or has to or has the grounds for a temporary restraining order, the employee can proceed with the temporary restraining order. But what we are saying is let us at least give the parties, at their option, the opportunity to have a little bit of time, a month and a half, which is nothing in litigation, nothing, a month and a half to utilize the service of professional mediators without lawyers, without going through the legal process. That does not make matters more complicated. It makes matters more simple, to avoid litigation, to avoid lawyers, to avoid motions, to avoid discovery. That makes matters more simple.

I said that employees have an option under the law as to how to initiate proceedings. One is to go to the courthouse and file a lawsuit. The second way is to file a complaint with the Department of Labor. And, under that method, then the Department of Labor proceeds with what is called conciliation. But conciliation under the Department of Labor's methodology does not include any representation by the employee. It is an adversarial proceeding by the Department of Labor against the employer, which then can lead to the employer going to court—or to the Department of Labor, rather, going to court.

What we are saying is, if it comes to the point where the conciliation process is moved along, the employee has been represented, the Department of Labor is there as an adversary, and if the employer and the Department of Labor can work nothing out, then, before litigation proceeds, give the employer and employee another 45 days with a professional mediator.

I honestly do not understand what is lost by providing some time for a mediator to work. That is the whole thrust of the amendment. It is just as simple as that. I reiterate the fact that I am for the bill. I support it. I support family leave. I do not support needless litigation, not only because it is expensive, not only because it consumes a lot of time which could better be used by doing other things, but because litigation creates hostility and bitterness and divisiveness, which I thought we were trying to take care of and really cure in this legislation.

I think this is a good supplement to the basic purpose of the legislation. I hope that the amendment will be adopted.

Mr. DODD. Mr. President, how much time remains?

The PRESIDING OFFICER (Mr. AKAKA). The Senator from Connecticut has 5 minutes, 30 seconds.

Mr. DODD. Well, we have more recent numbers here. Again, I am not arguing, I say to my colleague, about trying to reduce litigation. There is a common ground here. The question is whether or not one more layer in amending the Fair Labor Standards Act is going to achieve the desired results.

In 1992, the Wage and Hour Division completed about 67,000 compliance actions of which nearly 27,000 were conciliations and 40,000 were investigations. Conciliations were all initiated from responses to complaints. Total number of investigations completed, 23,000; Wage and Hour completed, 56 percent of conciliated complaints with 15 days of receipt and 74 percent within 30 days.

What I am worried about here, as I wait for the junior Senator from Missouri to come to the floor, is that when you propose yet another layer of mediation here, where already two or three exist, that could end up delaying this process even more. People are never satisfied by what they get out of these things—whether the employer or the employee. I did not get exactly what I wanted out of that conciliation round. I will try the next round. I am not satisfied there either. And you end up delaying results on these matters. Why not add four or five or six rounds of mediation? At some point here, you have to move and decide this is the best, based on objective analyses of reports, and if somebody wants to bring an action at the end of the day, so be it. But the assumption that one more layer of mediation or conciliation is going to resolve this or reduce those numbers substantially, I do not think there is evidence to support, were there no ability to have conciliation or mediation.

My colleague is correct, a complainant can go directly into court and file a complaint. But the fact of the matter is that no one does that, because there are no costs involved. This goes to the Department of Labor, and they try and

resolve matters. It is not in the interest of a complainant to go to court directly. There are very, very few—and "rare" is the proper word to use—instances where someone goes directly to court. But here with three rounds, if you will, of conciliation, and yet adding one more—I presume somebody else may offer another amendment, because if this mediation round does not work, why not a fifth round. It seems to me it could be carried out ad curiam.

I hope the people appreciate what we have done with this legislation. There has been 7 years of effort, working with everybody we possibly could, inviting employers and employees, and meeting with my colleagues. I have spent hours and hours in offices to come up with a proposal that would make sense. Maybe it is the late hour and the frustration, but after 7 years going through this bill four times out of committee, twice through the Congress, at the last hour I am faced with yet one more idea on all of this.

This is not a perfect bill. I know that. We will find out, as it goes into effect, where it is not working well and how we can improve it or change it. But, at this late hour, to say we need one more level of government here—and that is what we are talking about, in a sense—when the ones in existence can do the job, I think then it is unnecessary and uncalled for, particularly, when the process that exists that has proven to be successful, with thousands of complaints, reducing those to a fraction in terms of cases actually brought to litigation.

While I certainly would like to discourage litigation, I do not think we ought to allow this debate to end suggesting that litigation or going to court is a terrible thing. We would like to reduce it, if we could, but the third branch of Government, the judicial branch, certainly is a viable structure and means by which people can have their grievances adjudicated. While we had hoped to reduce that, I do not think we want to necessarily suggest that, ultimately, the good people sitting around in a room are necessarily going to resolve matters for the people who feel injured.

While we have gone through a conciliation process here, if at the end of the day a person feels he has to go to court, maybe you have to do it. As I said, the numbers indicate that the Department of Labor is pretty good at resolving most of these in pretty short order. When you get 74 percent of all of the complaints and investigations resolved in 30 days, that is pretty good work, in my view. Instead of suggesting that somehow they are failing at it, I think they deserve a commendation for doing what other agencies ought to be able to accomplish and possibly could do as well in other areas of tort reform, so as to reduce the proliferation of litigation and the costs associated with it, to business and to employers and to the employees, and others who have been aggrieved. With that, I do not see the junior Senator from Missouri. I guess we are running out of steam here, I say to the senior Senator from Missouri.

I reserve the remainder of my time.

Mr. DANFORTH. How much time do I have.

The PRESIDING OFFICER (Mr. AKAKA). The Senator has 5 minutes, 30 seconds.

Mr. DANFORTH. Mr. President, I understand the pique of the manager of the bill in saying that after all of the time he has spent working on the bill, to have somebody show up on the Senate floor with just one more idea is something that any manager would want to avoid.

I only suggest that I really think that is what the Senate floor is for; it is for people who have not been on the committee to show up with one more idea and offer that idea. The idea of mediation is not new. In fact, we have something called the Federal Mediation and Conciliation Service. All we are saying is that this very good service should be available before going to court. I think it will work in a number of cases.

I say that the only time this amendment is going to have any affect at all is when cases are on the way to the courthouse. In fact, there are a couple of thousand cases that are just taken to court without going to the Department of Labor under the existing law. What we are saying is that, in those cases, and in the 600 or so that the Department of Labor is said to file, in those cases that are headed to court, even if it is only 2,600 cases, instead of turning it right over to the lawyers, getting right into the process of litigation, into court, can we have a short period of time, a month and a half, where a professional mediator in an informal setting has at least the chance to work it out?

I see no harm in doing that. I honestly do not understand the argument against it, other than the argument that "let us never have any floor amendments to bills." But if our objective is not to have every problem in this country resolved in court, then what is wrong with allowing a professional mediator provided for under Federal law, allowing that person to sit down informally and try to work things out before proceeding with matters in court. That is all the amendment is about. It is straightforward, simple, easy, and designed to avoid needless litigation.

I yield the remainder of my time.

Mr. DODD. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. DODD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DODD. Mr. President, has all time expired on the Danforth amendment?

The PRESIDING OFFICER. The Senator is correct.

Mr. DODD. Mr. President, I move to table the Danforth amendment and ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The question is on the motion to table.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. SIMPSON. I announce that the Senator from Texas [Mr. GRAMM] is necessarily absent.

I further announce that the Senator from South Carolina [Mr. THURMOND] is absent due to a death in the family.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 56, nays 42, as follows:

[Rollcall Vote No. 6 Leg.]

YEAS—56

Akaka	Feingold	Metzenbaum
Baucus	Feinstein	Mikulski
Biden	Ford	Mitchell
Bingaman	Glenn	Moseley-Braun
Bond	Graham	Murray
Boren	Harkin	Nunn
Boxer	Heflin	Packwood
Bradley	Hollings	Pell
Breaux	Inouye	Pryor
Bryan	Jeffords	Reid
Bumpers	Johnston	Riegle
Byrd	Kennedy	Robb
Campbell	Kerrey	Rockefeller
Conrad	Kerry	Sarbanes
Daschle	Lautenberg	Sasser
DeConcini	Leahy	Simon
Dodd	Levin	Wellstone
Dorgan	Lieberman	Wofford
Exon	Mathews	

NAYS—42

Bennett	Faircloth	McCain
Brown	Gorton	McConnell
Burns	Grassley	Moynihan
Chafee	Gregg	Murkowski
Coats	Hatch	Nickles
Cochran	Hatfield	Pressler
Cohen	Helms	Roth
Coverdell	Kassebaum	Shelby
Craig	Kempthorne	Simpson
D'Amato	Kohl	Smith
Danforth	Krueger	Specter
Dole	Lott	Stevens
Domenici	Lugar	Wallop
Durenberger	Mack	Warner

NOT VOTING—2

Gramm	Thurmond

So, the motion to table the amendment (No. 14) was agreed to.

Mrs. KASSEBAUM. Mr. President, I move to reconsider the vote by which the motion was agreed to.

Mr. KENNEDY. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. DODD. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. DECONCINI. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. RIEGLE. Mr. President, I rise today in support of the American family. As a proud cosponsor of S. 5, the Family and Medical Leave Act, I think it is time that we respond to the changes that have occurred in the American workplace.

Earlier this century, most families had one parent who went to work everyday to feed his—usually the primary income earner in a family was a male—wife and children. Since the early 1950's, women have joined the labor force in steadily increasing numbers—by about a million workers each year. These women started working for many reasons. I am sure some do for the sense of accomplishment and fulfillment that working gave them. Others went to work after their children had grown up and moved out of the house. But many have had to go to work out of economic necessity. For many families, it now takes two incomes just to make ends meet.

Families have changed as well. The Census Bureau reports that single parents account for 27 percent of all family groups with children under 18 years of age—that was in 1988. This level is more than twice the level in 1970. Millions of women struggle as single heads of households. And the poverty level for these families is quite high. Most single parents have to work in order for their families to survive.

So the workplace has changed, but life continues to present challenges and unanticipated problems for many families. At any moment, a child could get sick, a parent may fall and break a hip, or your spouse could have a heart attack—not to mention that the same could happen to you. Our workers need the flexibility to take time off away from their jobs for emergency situations without fearing that they will lose their health benefits, or lose their jobs.

This legislation also addresses another major change in our society: the American population is getting older. Thanks to major accomplishments in medical technology and health care, Americans are living longer than ever before. The elderly are the fastest growing segment of the American population. Between 1980 and 1990, the number of people aged 75 and older grew by nearly one-third. Today, 32 million Americans are aged 65 and older—that is 12 percent of the population. How many of my colleagues have older parents? We live everyday with the prospect that an emergency will arise. Can we take leave at that point?—of course we can.

Now I know that many business interests are very concerned about this legislation. They say it will result in significantly higher costs for employers. They believe it will hurt U.S. competitiveness in the world economy. I am persuaded that this will not be the case. The Small Business Administration estimated that providing unpaid leave to an employee would cost $6.70 per employee per year. That is not a substantial cost. In fact, terminating an employee because of illness, disability, pregnancy, and childbirth costs much more—between $1,131 to $3,152 per termination—because of the costs associated with recruiting and retraining a new employee.

This legislation will not hurt the United States in the world economy. Virtually every industrialized country, as well as many Third World countries, have national policies in place to provide some sort of maternity or paternity leave. This includes many of our competitors. Japan provides 12 weeks of partially paid pregnancy disability leave; note that Japanese workers can still collect some salary—S. 5 calls for unpaid leave. Canada allows women to take up to 41 weeks off for the birth of a child; for the first 15 weeks of the leave, they can receive 60 percent of their salary.

Mr. President, the changes in the American workplace have placed new demands on the American family. It is time for us to give families the support they need to meet the often conflicting demands placed on them by work and family. I encourage my colleagues to support this legislation.

Mr. GRASSLEY. Mr. President, I rise today to speak on the family and medical leave bill, which the Senate is expected to pass in a matter of days. There is not one Member of this body who feels that this is not an issue worthy of attention. Families continue to struggle with the often conflicting demands of work and family, and meeting these challenges in a difficult economy poses even more hardship.

I question whether the passage of this bill will address these conflicts and truly assist families in need. I also question why we are here today considering this bill as our first order of business. Whatever happened to the economic and job crisis we all believe faces this Nation? And that is why I cannot support this legislation. In previous statements, I have thoroughly outlined my reasons for opposing the family and medical leave bill. So, I will not repeat myself in such depth today. However, in short, the bill does not even cover the majority of the American work force. It does not acknowledge the fact that many workers cannot forgo 3 months' salary, and, last, it fails to recognize that all families, and individuals, are different and that their needs vary. The bill simply does not give individuals the flexibility to tailor leave policies to their own needs. This bill will not allow for flex-time, part-time work, or job sharing.

For these reasons, I chose to support a bill that offers a tax credit for businesses that offer leave benefits. Unlike S. 5, this bill would cover the majority of the American work force. It would allow employees to design the leave benefit to meet their specific needs and, notably, the proceeds of the tax credit could be used to supplement income during the leave period. Senator CRAIG offered this bill as a substitute amendment to S. 5. I support and applaud his efforts. It seems appropriate that we consider alternatives to Senator DODD'S bill as well as attempts to improve the bill. However, I believe these attempts may not be fruitful due to opposition from my colleagues on the other side of the aisle.

Despite the opposition to this bill by many Members of Congress, the legislation will be passed and signed into law, as promised. Its passage, however, will create a new set of problems, and I would like to take this opportunity to focus on one of them: namely, new costs associated with this unprecedented Government mandate and its affect on job creation.

Last week, the Commerce Department announced that the economy grew at a surprisingly strong rate in the last 3 months of 1992, the strongest rate in nearly 4 years. That's the good news. The bad news is that unemployment claims are up and some of our oldest and largest companies are announcing layoffs right and left.

Some people wonder how the economy can grow, yet not create new jobs. Is this possible? Sure it is. The economy is growing because productivity is on the rise. Instead of hiring more workers to keep up with rising demand, companies are simply buying automated equipment to do the extra work or they are requiring more output from current employees. Even small businesses, which historically have been the sources of new jobs, are not hiring. These, and even larger businesses are wary of the future and the added costs associated with the labor market.

The family and medical leave bill is an unprecedented Government mandate. Its enactment will add new costs to the labor market, therefore hindering job creation. This mandate creates a new set of financial burdens on employers. Health insurance is by far one of the most expensive benefits a business offers. We all know that these costs are rising at alarming rates. As a result of this legislation, employers will have to continue to pay health benefits during the leave period, they will also assume the cost of hiring and training temporary employees. Or employers can simply let opportunities for growth pass by and not compensate for an absent employee. Furthermore, in the majority of States, including

Iowa, employers must pay unemployment compensation when a temporary worker leaves. Each claim raises the employer's unemployment insurance rates.

In an attempt to reduce the costs associated with this Government mandate, employers have a few options. According to a poll conducted by the National Federation of Independent Businesses, the largest representation of small- and medium-size businesses, 45 percent of its members said they would be less likely to hire young women, 46 percent said they would reduce low-skilled jobs, and more than half said they would cut other employment benefits and establish stricter personnel policies. Ironically, these very businesses are usually those that overwhelmingly provide the new jobs in this country.

At a time when job creation is our greatest need, we are going to inhibit job creation. Ironically, President Clinton was elected on a promise to stimulate economic growth and create millions of jobs over a 4-year period. This very promise was at the heart of his campaign commercials. However, mandating additional employment benefits is counterproductive to successful job creation. The central fact is that a rising cost for anything, including labor, reduces the amount employers can afford to buy in terms of new benefits or new employees.

Before we legislate employment benefits, we need to stimulate the economy and adopt policies which will promote job creation. Proponents of this bill often state that the United States is the only industrialized country in the world without a national family and medical leave policy. What they fail to tell you is that these nations suffer from high unemployment, suffering economies and tragically high taxes. This is the price they pay.

Whatever happened to the urgent need expressed by candidate Clinton, and accepted by the American people, to rejuvenate the economy? To stimulate job creation? To rebuild infrastructure? Why, instead, is our first legislative act an employment mandate that hinders rather than enhances these worthy goals.

Let the record reflect, Mr. President, that this Senator is scratching his head, wondering how we go forth toward economic recovery while our first step is taken backward.

Mr. FEINGOLD. Mr. President, I am pleased to join in supporting the Family and Medical Leave Act.

I was a proud sponsor of Wisconsin's family and medical leave law which has been in effect since 1988, and I thank the committee for including strong protections for State laws such as Wisconsin's which mandate family and medical leave provisions that are at least as generous as the Federal bill we have before us.

I hope this year we will be able to create the same profamily atmosphere for working families across the Nation.

Indeed, we are the only industrialized country that does not have a uniform policy determining family and medical leave benefits. Both the 101st and 102d Congress passed legislation establishing family and medical leave policies, and in both instances those bills were vetoed.

Now we face a fresh opportunity to assist working families. The Family and Medical Leave Act is a reasonable response to the changing needs of our work force. With more single-parent families, and more families where both parents work, caring for a sick child or parent poses special challenges. These challenges should not be compounded by fear of losing one's job.

Throughout the committee action and debate of the last two Congresses, I believe a very workable bill has been crafted. The Family and Medical Leave Act would require employers with more than 50 employees to provide up to 12 weeks of unpaid leave yearly. Coverage includes caring for a newborn or newly adopted child, caring for a seriously ill child, parent or spouse, or the employee's own serious illness. The bill would require continued health insurance, and reinstatement in the same or similar job at the end of leave.

Despite warnings raised during legislative debate on the Wisconsin law about the potential harmful effects on the State's business, Wisconsin's economy has continued to outperform many other States with no such law. In fact, by the end of the legislative debate on the issue, the bill was endorsed by the largest business lobby in our State, and was signed by a Republican governor.

At the Federal level as well, this has become a bipartisan issue. Many members of both sides of the aisle realize that a parent who is distracted by thoughts of a sick child at home, is not the most productive employee. They also realize that the failure to provide family or medical leave presents other hardships for employees striving to balance the needs of their families with the demands of their jobs.

For instance, as our elderly population grows, more and more adults contribute to the care of both their children and their parents while working full time. Striving to keep parents in their own homes and relatively independent provides a real benefit to society as well as the family structure and should not be punished by loss of a job. Both our society and our families have undergone substantial change; our family leave policies must also change.

I join my colleagues in seeking swift passage of this important legislation.

Mr. DECONCINI. Mr. President, I want to make a statement on a different matter. I have already spoken in favor of the family leave bill. I want to discuss something that is somewhat of a personal nature but more of national importance from my perspective.

"FRONTLINE" ATTACK ON DRUG INTERDICTION PROGRAMS

Mr. DECONCINI. Mr. President, last night the Public Broadcasting Service aired a "Frontline" program which I cannot characterize as anything more than an all-out sensational attack on our Nation's drug interdiction programs. Not only was the program unfair in its treatment of the Customs' drug interdiction personnel and programs, but it was grossly unfair to me as an individual. Mr. President, until last night, I was under the impression that the Public Broadcasting Service, which receives support from Federal appropriations to the Corporation for Public Broadcasting, attempts to objectively investigate and report the news. I am now convinced that PBS, at least in the case of this particular program, has succumbed to the tactics of the network news shows which are more concerned about ratings than providing an honest analysis of facts. As a consistent supporter of public television, I was appalled by the "Frontline" piece, which was full of inaccuracies, insinuations, and unsubstantiated accusations by less-than-credible sources.

Uncovering the sophisticated methods of the drug traffickers is no easy chore. Drug criminals have unlimited access to money and will go to any lengths to succeed in their criminal activities. So, what should the Federal Government do—should it arm itself with state-of-the-art technology to make the human job easier, or should it simply sit back and let the traffickers laugh at its lack of commitment? Mr. President, as early as 1981, along with Congressman GLENN ENGLISH, I was at the forefront of efforts to make sure that our Federal law enforcement agencies had the authority and the tools needed to stem the flow of illegal narcotics into this country. At that time, the steady flow of single-engine planes carrying cocaine and other narcotics from the drug source countries had a stranglehold on law enforcement. Customs, the Coast Guard, and DOD did not have the equipment nor the personnel required to stop the onslaught. It was not until after continual prodding from experts in Customs, NORAD, and the Congress that those responsible for the formulation of a comprehensive and intelligent antidrug policy for the United States were able to embark on a program to even up the odds, just to make it a level playing field at best.

Back in the early 1980's, Congressman GLENN ENGLISH and I held numerous hearings on the lack of proper equipment and personnel for our Federal law enforcement agencies to stem

the flow of illegal narcotics into the United States. An air interdiction program was formulated which called for the procurement of radar ballons, known as aerostats, to be placed all along the southern border of the United States to detect low-flying aircraft coming into the United States. This concept was borrowed from DOD who had successfully operated aerostats for defense purposes in southern Florida for years, monitoring every ship and airplane that went in and out of Cuba. The whole idea of using aerostats in drug interdiction was to provide a resource to serve as a deterrent to low-flying aircraft carrying illegal narcotics which were attempting to penetrate U.S. borders.

The current air drug interdiction program consists of land-based aerostat radar detection ballons along the U.S. southern border and in the Carribbean, and a series of airborne surveillance assets such as P–3 AEW, interceptor aircraft, and apprehension helicopters. The purpose is to seal off the border to illegal drugs coming in by aircraft. The program has been expanded in recent years to interdict the narcotic flow before it gets to the U.S. border.

The aerostat program is not perfect, and I have never claimed that it is, but it is currently our most effective and financially reasonable technology available to combat airborne drug smuggling. "Frontline," however, rather than presenting an insightful, thoughtful, or even well-researched exploration of the aerostat program, chose to sacrifice all journalistic integrity in favor of a completely lopsided smear piece, rife with easily identifiable mistakes and baseless attacks on me and my motivations for supporting the aerostat program. The personnel of our law enforcement agencies risk their lives on a day-to-day basis to stop drugs coming into this country.

"Frontline" states that in 1992, aerostats were up only 39 percent of the time. Mr. President, this figure is just flat out wrong. They know it was wrong. The figure is 59 percent. Some may say that 59 percent is not very good. But let us be accurate. For the record I will insert some charts that I received from the Customs Service on this subject matter that verify those figures.

Why only 59 percent? Because there were aerostats in Texas that fell down because of improper production. As a result, the contractor for those ballons lost the contract for the option on the next four ballons. All the time those aerostats were down on the ground, being repaired, was counted in that 59 percent.

I have been deeply involved with air interdiction programs since their inception over a decade ago, and it is simply absurd for "Frontline" to suggest that my support for four aerostats in 1991 was based on lobbying efforts or campaign contributions from former staff members now working with the Parry and Romani consulting firm. There is no need to lobby Lee Iacocca to buy a Chrysler, and there is no need to lobby DENNIS DECONCINI to support the aerostats when experts have repeatedly indicated it is the most cost-effective alternative. And I have been there since 1981.

I had called for these balloons publicly, and customs had planned for them publicly, years before TCOM ever hired Parry and Romani. The Federal Aviation Administration first advised Customs to begin looking for aerostat sites on the Southwest border and the gulf in 1981. Major General Piotrowski, in hearings before the House in 1983, urged consideration of the use of aerostats in the war on drugs. At a 1984 press conference in Arizona I briefed reporters on the first antidrug aerostat, which went operational in 1985 at High Rock in the Bahamas. In 1986 I spoke on the Senate floor of the need for more balloons to complete the aerostat fence. Customs began seeking proposal requests from contractors for these balloons in 1987. TCOM built the first aerostat, including the ones still successfully flying over High Rock and Fort Huachuca.

The campaign contributions referred to in the "Frontline" piece were not made until 1989. The idea that my support was bought 8 years after I helped start the program is, quite frankly, completely ludicrous. By the time Parry and Romani began representing TCOM my support for the aerostats as the most cost-effective drug detection technology was well known and widely publicized. Members of this body, I am sure, recall me standing on the floor many times advocating the aerostat program all the while these two gentlemen were actually on my staff helping me secure authorization and funding for the program.

Additionally, the piece did not include the fact that shortly after hiring Parry and Romani, TCOM lost their contract with the Department of Defense to build the aerostats. That was not in the "Frontline" program. The contracts are, and always have been, awarded on the basis of competitive bidding, a process I have never involved myself in. TCOM lost the contract because they were underbid by GE. GE built the aerostats which are the ones most often cited as having a large amount of downtime.

The GE-built balloons did not stay afloat, as evidenced in the "Frontline" piece. The contractor could not deliver a product that would stay airborne. As a result, Customs did not renew the GE contract.

The GE contract had also included an option for four additional aerostats, an option which was understandably not picked up by the U.S. Government due to the problems with GE-built balloons. These four balloons are the ones "Frontline" credits to lobbying efforts on the part of Parry and Romani. I can not even begin to understand the reasoning behind this assertion.

Obviously these balloons were planned by Customs for years, and did not spring full-grown from the head of either TCOM or the Parry and Romani public relations firm. In fact, some of the money used to pay for these aerostats had been appropriated for the purchase of new aerostats before TCOM even hired Parry and Romani, and years before TCOM won the contract.

Finally, and most importantly, I wish to assert once again that the aerostat program does work. All intelligence sources report dramatic decreases in the amount of airborne drug traffic since the first Southwest border antidrug balloon went up above Fort Huachuca, AZ, in 1987. In a September 1990 letter, written shortly before funding was secured for the four aerostat balloons in question, Stephen Duncan, DOD's coordinator for drug enforcement policy, called the aerostats the "most cost-effective counternarcotics detection and monitoring asset" for the near future.

"Frontline" featured Duncan in their segment. He said Congress sometimes requires the Pentagon to buy equipment it does not want. They pointed to a letter which was written to me in 1991 from Duncan which stated that "the technology had shortcomings." That is accurate.

Now, Mr. President, that was not too surprising because "Frontline" wanted to paint the worst picture and not tell the whole story.

Weather, terrain, and other factors affect the performance of the aerostats. But, because I was concerned that DOD may have some knowledge that I needed to be aware of, I called a meeting with Duncan to discuss DOD's concerns in April 1992. Duncan sent his deputy Mike Wermuth and Rear Adm. Lloyd Allen to that meeting in my office. We had a meeting. We went over the whole thing—I was told that the aerostats were still the most cost-effective means of deterring airborne drug smugglers.

I do not recall Mr. Duncan quoted in the "Frontline" story saying that the aerostats were forced on the Department of Defense. He said sometimes Congress forces us to buy things we do not want. "Frontline" drew the conclusion that he was referring to the aerostat balloons. Is that honesty? It is not.

The 1989 General Accounting Office report criticizing the aerostats which "Frontline" referred to has been widely disputed and virtually disregarded by nearly everyone with expertise on the drug problem.

Mr. President, "Frontline" chose to use sources for the antidrug piece who

have questionable credibility. One such source, was Frank Ault, a former Customs consultant who was fired by the former Commissioner of Customs. He then went to work for GE, a company that was under contract with Customs for the aerostat program. GE fired him also. Maybe "Frontline" should have investigated the explanation for Mr. Ault's criticism of the program instead of taking everything and anything he said at face value.

At least they should have pointed out that he had once worked for Customs and was fired because he was not a good employee—that he worked for GE and was fired because he was not a good employee. To the credit of GE, they wrote me a letter of apology for Mr. Ault's statements.

I have no personal stake or interest in aerostats or any other air interdiction technology. My only interest is that we have the best technology available to fight drug traffickers. The fact is there are no cost-effective alternatives to aerostats—nothing else exists. If and when something becomes available, I will be the first to support using alternative technology.

Other sources used in that program was a Mr. Blum, who worked for a Senator. He stated that the only reason we supported aerostats was because money was laid on the table. That is absurd. This lawyer ought to be ashamed of himself for making such statements. He himself has raised money for his former boss. He knows and has respect for that Senator. He ought to have respect for this body and for this Senator.

More disturbing, Mr. President, is that after listening to the "Frontline" piece, I am convinced more than ever that this body must make campaign finance reform a top legislative priority. Without changes in the way in which campaigns are financed, every Member of this body who supports a program based on the merits, will subject himself or herself to the types of harmful and unwarranted allegations which were leveled against me in the "Frontline" program. You support and fund a program that you believe in. Some individual or entity who has an interest in the program gives you a campaign contribution and all of a sudden, sometime sinister is afoot.

You did not do it because you thought it was good for law enforcement, health purposes or education or family leave.

You did it because of the contributions. That is nonsense.

Have we won the war on drugs in this country? No, we have not. Is the war on drugs as successful as it could be? No, it is not. The answer, however, will never be found through sensationalism, shoddy journalistic techniques and personal attacks. Either Frontline's producers and reporters simply do not understand the issue with which they were dealing, or else they deliberately chose to ignore the facts in their drive to find a hot story. I understand that television reporters are under intense pressure to produce something exciting and new, particularly after investing the time and expenses of an 8-month investigation. But this does not justify misleading the public by presenting them with a supposedly unbiased report which is, in fact, riddled with mistakes, omissions, and insinuations as this one was.

Mr. President, either we get serious in this war on drugs, or we just be honest with the public and say we surrender, legalize the drugs, let them come in over the border with no prohibitions whatsoever. You cannot wage a war on drugs without a full frontal assault on the traffickers. Sure, we can take down the aerostat balloons, mothball the antidrug aircraft, and sit back and wait until the communities are bombarded with drugs. We would then leave a legacy for our children of violence and drugs far greater than what we have today, and it is a shame what we have today. But to use news shows to try to dismantle a program which is working is just flat wrong.

Mr. President, I ask unanimous consent that this information regarding aerostat uptime and downtime be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

PERCENTAGE OF AEROSTAT—UPTIME VS. DOWNTIME

	Uptime	Downtime
Fiscal year 1991:[1]		
Cudjoe Key	47	53
High Rock	61	39
Georgetown	68	32
Puerto Rico	38	62
Ft. Huachuca	67	33
Deming	66	34
Yuma	84	16
Marfa	41	59
Eagle Pass	37	63
Rio Grande City	55	45
Fiscal year 1992:[2]		
Cudjoe Key	59	41
High Rock[3]	46	54
Georgetown	69	31
Deming	65	35
Ft. Huachuca	65	35
Yuma	82	18
Marfa	48	52
Eagle Pass	41	59
Rio Grande City	51	49
Puerto Rico	82	18

[1]Average percent uptime=60%.
[2]Average percent uptime=59%.
[3]Out of service.
Source: U.S. Customs Service.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. LEVIN). The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. MITCHELL. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

ORDER OF PROCEDURE

Mr. MITCHELL. Mr. President, the distinguished Republican leader and I have had a series of discussions today regarding the disposition of the pending bill and as part of that the disposition of possible amendments to the bill, including an amendment relating to the current policy of the military regarding the service of homosexuals in the military.

It had been my hope that the Senate would have completed action on the family and medical leave bill this evening. We had progressed through a number of amendments during the day and there was good reason for optimism in that regard. About an hour ago, Senator DOLE asked me not to proceed further on the bill, specifically to permit him to consult with his colleagues regarding one or two amendments which he may offer to the bill that are related to the bill and also to consult with his colleagues regarding the best course of action to take with respect to the possible amendment relating to the ban on gays in the military. I, of course, agreed to the delay to accommodate Senator DOLE, as I always do when he is mutually accommodating in similar circumstances as well.

Following that, Senator DOLE has just advised me that it is his preference that we not proceed further on the bill at all this evening and that we put it over until the morning, at which time he is prepared to offer his amendments related to the bill. It is his anticipation that they will not take a long period of time and should be resolved promptly. And there may be one or two other such amendments, so that we can anticipate early during the day tomorrow that all action on the bill will have been completed that relates to the subject matter of the bill, with the only matter then unresolved, the possible amendment on service by gays in the military.

On that matter, we have had several discussions during the day about a possible agreement on a process for resolving that, and we have not, as of this time, reached agreement. We have discussed a number of alternatives. Senator DOLE made one suggestion to me; I made a suggestion to him. We have consulted with various of our colleagues on both sides, but as of this moment, we do not have an agreement and it is possible that there will not be an agreement regarding that and we will, of course, each and all of us have to proceed in accordance with the rules and practices of the Senate.

It is also possible that we will be able to reach an agreement in the morning and do it in a manner that is by mutual agreement that will enable us to dispose of that matter and complete action on the bill. But as of now, no decision has been made. I have called a caucus of Democratic Senators for 9:30 tomorrow morning for the purpose of discussing, of reporting to Democratic Senators on the substance of my dis-

cussions with Senator DOLE and of the options available and will be in a position to discuss the matter further with Senator DOLE immediately following that caucus.

If we are not able to reach agreement and if we must proceed with respect to the rules, then Senator DOLE has indicated to me that there is a possibility, as is permitted under the rules, that he and his colleagues will not permit us to proceed to complete action on the bill and that it will then be necessary to file a cloture motion in an effort to terminate debate and complete action on the bill.

So I have indicated to Senator DOLE that this being Wednesday, I believe the best way to proceed in terms of trying to complete action on the bill will be, in the absence of an agreement at this time, for me to file the cloture motion this evening so that if a cloture vote does occur, it will occur not later than Friday, but in the interim to continue our efforts which have been serious and in good faith on both sides to try to reach an agreement on a way to proceed that will enable us to dispose of the issue which is in contention and complete action on the bill, thereby rendering unnecessary any vote on the cloture motion.

So that is where we stand right now, and I would like at this time to invite the distinguished Republican leader to first comment to make certain that I correctly stated the situation with respect to the discussions between us and our current intentions and then to add any further comments that he may wish to make.

The PRESIDING OFFICER. The Republican leader.

Mr. DOLE. Mr. President, if the majority leader will yield, he has correctly stated the facts. I do have two meritorious amendments which the manager may accept. I could discuss those this evening, but they do relate to the bill, very thoughtful amendments. I know I will receive sympathetic consideration before they are killed. But in any event, I am prepared to offer those in the morning.

We are not trying to delay the bill. We would like to finish everything except the one area where I think there will be some controversy. If we can work it out, we will have a debate and we will have a vote. But it is our intention to offer an amendment. If we cannot work it out, we will offer the amendment and see what happens. The majority leader will then second degree the amendment, we will have a vote on the second-degree amendment and we will offer our amendment again. That can, I assume, go on for some time.

It is our hope that we can reach some agreement, that we can have an expression on our amendment and on the majority leader's amendment, either freestanding votes or in some other fashion we have discussed, as the majority leader indicated.

I will just indicate if we are successful, we could complete action on the bill tomorrow. If not, I think the majority leader has indicated he will file a cloture motion. I do not believe that cloture can be obtained, and that would mean that we would not be able to complete action on the bill. I guess the cloture vote would come Friday unless we consent to do it earlier.

Mr. MITCHELL. That is correct.

Mr. DOLE. So we would not be able to complete action on the bill. And of course, if cloture is not invoked, the majority leader is at liberty to file additional cloture motions, and we would have additional votes on cloture.

I think that covers everything. I know it is cleared up for me.

Mr. MITCHELL. Mr. President, I thank my colleague and, given the circumstances, I think that there really is not any alternative but to accede to Senator DOLE's request to put the matter over until tomorrow. That will give us all a chance to review it at that time, as I earlier described. Therefore, there will be no further rollcall votes this evening, and we will resume on the bill as indicated tomorrow morning and I hope complete action on the two or three pending measures unrelated to the controversial issue, and then we will discuss at that time how best to proceed.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. MITCHELL. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

CLOTURE MOTION

Mr. MITCHELL. Mr. President, I send a cloture motion to the desk and ask that it be stated.

The PRESIDING OFFICER. The cloture motion having been presented under rule XXII, the Chair, without objection, directs the clerk to read the motion.

The legislative clerk read as follows:

CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, hereby move to bring to a close the debate on S. 5, the family and medical leave bill:

Senators Christopher Dodd, Patty Murray, Russ D. Feingold, D.K. Inouye, Carol Moseley-Braun, Bob Krueger, Jeff Bingaman, Paul Wellstone, Dianne Feinstein, Joe Biden, B.A. Mikulski, J. Lieberman, Chuck Robb, John F. Kerry, Bob Kerrey, Edward M. Kennedy.

EXECUTIVE SESSION

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Senate go into executive session to consider the following nominations, en bloc—

Hershel Gober to be Deputy Secretary of Veterans Affairs, reported today by the Committee on Veterans' Affairs, and

R. James Woolsey to be Director of Central Intelligence, reported today by the Select Committee on Intelligence.

I further ask unanimous consent that the nominees be confirmed, en bloc; that any statements appear in the CONGRESSIONAL RECORD as if read; that the motions to reconsider be tabled, en bloc; that the President be notified of the Senate's action; and that the Senate return to legislative session.

The PRESIDING OFFICER. Without objection, it is so ordered.

The nominations considered and confirmed en bloc are as follows:

EXECUTIVE OFFICE OF THE PRESIDENT

R. James Woolsey, of Maryland, to be Director of Central Intelligence.

DEPARTMENT OF VETERANS AFFAIRS

Hershel Wayne Gober, of Arkansas, to be Deputy Secretary of Veterans Affairs.

STATEMENT ON THE CONFIRMATION OF HERSHEL GOBER

Mr. ROCKEFELLER. Mr. President, as chairman of the Committee on Veterans' Affairs, I am delighted to recommend to the Senate that Hershel Gober be confirmed as the Deputy Secretary of Veterans Affairs. Together with Secretary Jesse Brown, Hershel will provide leadership and strength to the Department of Veterans Affairs to serve the veterans of West Virginia and the entire Nation.

The committee held a hearing on January 22, 1993, at which Hershel responded openly to questions from committee members. After reviewing Hershel's answers to posthearing questions, the committee met today and voted, without dissent, to recommend his confirmation as Deputy Secretary.

Mr. President, Hershel Gober understands the obligations that we hold to those who served this country, both in times of war and in times of peace. First in the Marine Corps, followed by a 17-year career in the Army, Hershel served with honor and distinction as is recognized by his many military decorations, including the Bronze Star and Purple Heart which he received during service in Vietnam.

Upon Hershel's return to his home State of Arkansas in 1983, he committed himself to protecting and supporting veterans' benefits. His work as the director of the Arkansas Department of Veterans Affairs earned him the respect of his colleagues and, in 1992, the award as the most effective State director from the National Association of State Directors.

Mr. President, Hershel brings to VA a valuable perspective on the relationship between the various State departments of veterans affairs and the Federal Department of Veterans Affairs. Such a perspective will assist him in

building a closer partnership around sharing responsibilities and providing services more effectively to veterans. Also, his close working relationship with President Clinton and Secretary Jesse Brown should ensure that the voice of America's veterans will be heard clearly throughout the administration.

During his confirmation hearing before the committee, Hershel highlighted the importance of delivering veterans' services in rural areas and his experience in doing so in Arkansas. I certainly look forward to working with him to find the best ways to meet the needs of veterans in West Virginia and other rural States.

Mr. President, I close by sharing a comment Hershel made in his opening remarks before the committee. He said, "I give you and this committee my personal commitment that I will do everything in my power to ensure that America continues to meet its obligations to those who have served in our Nation's armed services." I look forward to working with Hershel toward the fulfillment of that commitment and am confident that he will serve veterans well as VA's Deputy Secretary.

STATEMENT ON THE NOMINATION OF R. JAMES WOOLSEY

Mr. DECONCINI. Mr. President, the Select Committee on Intelligence yesterday voted unanimously to recommend Mr. Woolsey's confirmation to the Senate, and I heartily endorse this nomination to my colleagues.

Assuming his confirmation, Mr. Woolsey will be the 16th person to serve as Director of Central Intelligence since the office was created in 1946 by President Truman. The responsibilities and authorities of the DCI have evolved considerably since then, and, indeed, the capabilities of U.S. intelligence are vastly larger and vastly more sophisticated than President Truman could ever have imagined.

As the official responsible for coordinating these capabilities and marshalling them in support of the President and other policymakers, the DCI plays a uniquely sensitive and a uniquely important role in the Government. He must support policymakers, but not become a captive of policymakers. He must ensure that the vast capabilities at his disposal are effectively utilized, but that they remain within the confines of U.S. law and bounded by our national interest. He should be prepared to take risks, and yet be prudent and restrained in terms of both policy decisions and resource allocations. In short, the position demands an uncommon measure of judgment and discretion.

And the next DCI, it seems to me, is likely to face an even more difficult assignment than his predecessors. It hardly needs repeating that the world has dramatically changed. While it may have become less threatening, it has also become vastly more complicated. The end of the cold war has unleashed nationalistic, ethnic, and religious conflicts which had been previously held in check. We now have to worry about countries and conflicts which were not on our screens several years ago.

The Intelligence Community has necessarily shifted the focus of its attention. The demands for information have not abated; indeed, they have increased. The review of intelligence requirements which was completed last year at DCI Gates' direction resulted in not one requirement being dropped. Rather, the review resulted in only new requirements being added.

Notwithstanding the apparent appetite for intelligence, there is considerable pressure, given our enormous budget deficits, to do more with less, and, I, for one, think it can and should be done. While the demands for information have not abated, it does seem to me there is a potential for savings if we look objectively at the means we use to collect it. In the past, we were forced to undertake costly technical programs because we were denied access to certain countries. Many of those countries are now accessible. By the same token, we developed highly specialized capabilities to be able to reach particular targets. Now many of those targets no longer pose a threat to us. On the other hand, because of our long fixation on the Soviet military threat, we may not have developed capabilities to give us sufficient breadth and flexibility in other parts of the world.

It seems to me the principal challenge for the new DCI will be to match collection capabilities to the rapidly shifting needs of the Government. I will be looking to the new DCI to undertake a comprehensive review of this problem as an early order of business, and advise this committee of his findings. Clearly, we must preserve a capability to provide the President with warning of diplomatic and military crises around the world, and provide him with the information he needs to choose between competing options. We must provide our military forces with the information they need to deploy around the world and to defend themselves against hostile actions. We must preserve a capability to monitor and verify the arms control agreements we now have in place, as well as cope with international narcotics and terrorist operations.

The cold war may be over, but there are some demands on intelligence that will remain constant whatever the political environment.

To confront these daunting challenges, President Clinton has, in my view, sent us a very able nominee. Jim Woolsey is, in many ways, an ideal choice for this job. He has seen intelligence from the inside, but he brings the vigor and fresh perspective of an outsider.

The nominee's academic and professional credentials are impeccable. A graduate of Stanford where he became a Rhodes scholar, with a graduate degree from Oxford and a law degree from Yale Law School, he has also served with distinction as the Under Secretary of the Navy during the Carter administration, and as Ambassador to the Conventional Forces in Europe talks where he led the U.S. team to a successful negotiation of a very complicated and important treaty. He has written and spoken frequently and eloquently on public policy issues.

Mr. President, yesterday the committee had the opportunity to question the nominee in both open and closed sessions. He acquitted himself quite well. While he was unable to answer a few of our questions pending the Clinton administration developing its own positions, I cannot fault him for this. He did impress me, however, with what I perceive to be a genuine committment to the oversight process and to working with the oversight committee. The importance of this committment cannot be overemphasized.

In sum, Mr. President, I think we are fortunate, indeed, to have a man of his caliber nominated for this position, and I urge my colleagues to support him.

STATEMENT ON THE NOMINATION OF HERSHEL W. GOBER

Mr. MURKOWSKI. Mr. President, I am pleased to support the confirmation of Hershel Gober to be Deputy Secretary of Veterans Affairs. Mr. Gober has most recently served as a State director of veterans affairs, in Arkansas. That background, and Mr. Gober's experience as a career Army officer and, before that, an enlisted Marine, are key qualifications for this important post. As ranking Republican of the Veterans' Affairs Committee, I very much look forward to working with Mr. Gober, and with Mr. Jesse Brown, the Department of Veterans Affairs' recently confirmed Secretary, in addressing the needs of the Nation's veterans.

There is an additional aspect of Mr. Gober's background which I, as a Senator from Alaska, would like to highlight. While Mr. Gober is a native of Arkansas, he also spent a number of years in Alaska—first, as an Army officer and later, after his retirement from the Army, as a civilian. I am particularly pleased to see that a person with a firsthand understanding of Alaska's unique circumstances—and her geography, weather, and people—will be on VA's senior management team.

Mr. Gober is a graduate of Alaska Methodist University in Anchorage. He has resided in my hometown, Fairbanks. He served for 5 years as an employee of the NW Alaskan Pipeline Co. And in his capacity as the NW Alaskan

Pipeline Co.'s director of permits, rights of way and land acquisition, he learned firsthand about the concerns of Alaska landowners—particularly of Alaska Natives—with whom he did extensive business in securing right of way access to Alaska Native lands. He obviously learned well of the concerns of Alaska Natives. Since the announcement of his nomination, representatives of Alaska Native veterans groups have spoken to me glowingly of Mr. Gober.

Mr. President, at the hearings held by the Committee on Veterans' Affairs on January 22 on Mr. Gober's nomination, all of the members of the committee learned for themselves why Alaskans enthusiastically support Mr. Gober's nomination. He is obviously an intelligent, confident, and capable man. He is also a man who does not put on airs, and who talks straight. I look forward to working with him as Deputy Secretary of Veterans Affairs. I hope that he will visit Alaska before many weeks have passed, and I am pleased to support his nomination.

STATEMENT ON THE CONFIRMATION OF HERSHEL W. GOBER

Mr. SIMPSON. Mr. President, I rise today to offer my strong support for the confirmation of Mr. Hershel W. Gober to be Deputy Secretary of Veterans Affairs.

Mr. Gober has a long and distinguished career of service to this country. First as an enlisted man in the Marine Corps and then as an infantry officer in the Army. He has served honorably and worked diligently in various countries and States ranging from Vietnam and Germany to Alaska and other domestic posts.

Mr. Gober retuned to his native Arkansas in 1983 and in 1988, became the director of the Arkansas Department of Veterans Affairs.

As the director of the Arkansas Department of Veterans Affairs he had the opportunity to see firsthand the positive effects that benefits and programs have on the everyday lives of deserving veterans. He has also come to understand the many challenges that face those who run the Department of Veterans Affairs and our national health care system.

In addition, his experience has afforded him the chance to meet and work directly with the numerous hardworking professionals who make up the Department of Veterans Affairs and he understands how the system works.

His life of exemplary service to our Nation and his understanding of veterans' issues will serve to assist Mr. Gober in tackling the challenges that will arise daily during his tenure at the VA.

I met with Mr. Gober recently, and I am very impressed by his sincerity, his qualifications, and his concern about veterans' issues.

I do very much look forward to working with Mr. Gober and with the new Secretary of Veterans Affairs—Jesse Brown—as we grapple with the difficult issue of how to reconcile the genuine needs of veterans with our sincere desire to reduce the Federal deficit.

LEGISLATIVE SESSION

The PRESIDING OFFICER. Under the previous order, the Senate will return to legislative session.

REREFERRAL OF A BILL—S. 267

Mr. MITCHELL. Mr. President, I ask unanimous consent that S. 267 be discharged from the Governmental Affairs Committee, and referred to the Labor and Human Resources Committee.

The PRESIDING OFFICER. Without objection, it is so ordered.

DIRECTING THE SENATE LEGAL COUNSEL TO APPEAR AS AMICUS CURIAE

Mr. MITCHELL. Mr. President, on behalf of myself and the distinguished Republican leader, Senator DOLE, I send to the desk a resolution to direct the Senate legal counsel to appear as amicus curiae in the name of the Senate in the case pending before the U.S. District Court for the District of Columbia, and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

A resolution (S. Res. 62) to direct the Senate Legal Counsel to appear as amicus curiae in the name of the Senate in Turner Broadcasting System, Inc., et al. v. Federal Communications Commission, et al. and consolidated cases.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the resolution?

There being no objection, the Senate proceeded to consider the resolution.

APPEARANCE BY SENATE AS AMICUS CURIAE IN SUPPORT OF THE CONSTITUTIONALITY OF THE CABLE TELEVISION CONSUMER PROTECTION AND COMPETITION ACT OF 1992

Mr. MITCHELL. Mr. President, a three-judge Federal district court in the District of Columbia is considering constitutional challenges to the must-carry provisions of the Cable Television Consumer Protection and Competition Act of 1992, which was passed over the President's veto. The must-carry provisions require cable operators to carry the signals of certain local commercial and noncommercial educational television stations. They have been challenged primarily by cable operators who argue that the provisions violate their first amendment rights, as speakers, to choose what messages they will convey over their cable systems.

The Cable Act seeks in large measure to control the market power of cable, while fostering competition so that the need for regulation will eventually diminish. As part of this legislation, Congress has acted to ensure that both cable subscribers and those who do not subscribe to cable will continue to have access to local broadcast signals by requiring that cable operators must carry those signals under certain circumstances. In addition, the legislation is intended to foster competition by placing over-the-air broadcast stations in a better position to compete with cable for advertising revenue. Although there was intense debate about a number of provisions of the Cable Act, including the provisions on rate regulation, there was broad support in the Congress for the act's must-carry provisions.

This resolution would authorize the Senate legal counsel to file a brief in the name of the Senate as amicus curiae in support of the must-carry provisions of the Cable Act. Last November, the Department of Justice notified the Congress that it would have an ethical conflict of interest in defending the act's must-carry provisions after having advised President Bush that they were unconstitutional. Following that notification, the district court entered an order that would allow the Houses of Congress to file briefs in support of the statute by February 12. While it is hoped that the Department will now support the statute, there is merit, in light of this transitional period and the schedule established by the court, for a brief to be filed on behalf of the Senate which describes to the court the legislative record upon which the Congress enacted cable legislation.

The PRESIDING OFFICER. Without objection, the resolution is considered and agreed to, and the preamble is agreed to.

The resolution (S. Res. 62), with its preamble, reads as follows:

S. RES. 62

Whereas, in the case of Turner Broadcasting System, Inc., et al. v. Federal Communications Commission, et al., No. 92-2247, and consolidated cases Nos. 92-2292, 92-2494, 92-2495, 92-2558, pending before a three-judge court of the United States District Court for the District of Columbia, the plaintiffs have challenged the constitutionality of sections 4 and 5 of the Cable Television Consumer Protection and Competition Act of 1992, Pub. L. No. 102-385, 106 Stat. 1460, 1471-81, which require cable operators to carry the signals of certain local commercial and noncommercial educational television stations;

Whereas, pursuant to sections 703(c), 706(a), and 713(a) of the Ethics in Government Act of 1978, 2 U.S.C. 288b(c), 288e(a), and 288l(a) (1988), the Senate may direct its Counsel to appear as amicus curiae in the name of the Senate in any legal action in which the powers and responsibilities of Congress under the Constitution are placed in issue: Now, therefore, be it

Resolved, That the Senate Legal Counsel is directed to appear as amicus curiae on behalf of the Senate in Turner Broadcasting System, Inc., et al. v. Federal Communications Commission, et al., and consolidated cases in support of the constitutionality of sections 4

and 5 of the Cable Television Consumer Protection and Competition Act of 1992, Pub. L. No. 102-385, 105 Stat. 1460, 1471-81.

Mr. MITCHELL. Mr. President, I move to reconsider the vote by which the resolution was agreed to.

Mr. DOLE. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AUTHORIZING REPRESENTATION BY SENATE LEGAL COUNSEL

Mr. MITCHELL. Mr. President, on behalf of myself and the distinguished Republican leader, Senator DOLE, I send to the desk a resolution to direct the Senate legal counsel to represent members who have been named as defendants in a lawsuit pending in a State court in Arkansas, and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

A resolution (S. Res. 63) to authorize representation of Members of the Senate in the case of Bobbie Hill v. Bill Clinton, et al.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the resolution?

There being no objection, the Senate proceeded to consider the resolution.

AUTHORIZATION FOR REPRESENTATION

Mr. MITCHELL. Mr. President, a civil action has been commenced in Arkansas circuit court to challenge the constitutionality of an amendment to the Arkansas State Constitution that the voters of Arkansas approved in November 1992, establishing term limits for Arkansas' State officials and representatives in Congress. The amendment limits U.S. Senators to two 6-year terms and Representatives to three 2-year terms.

The plaintiff, who sued on behalf of herself, other voters in Arkansas, and the Arkansas League of Women Voters, asserts that the Arkansas term limitation amendment violates the U.S. Constitution by imposing a qualification for congressional office other than the qualifications listed in the Constitution.

The plaintiff named the members of Arkansas' congressional delegation, including Senator DALE BUMPERS and Senator DAVID PRYOR, among the defendants in the action, pursuant to an Arkansas statute requiring that all individuals who would be affected by a declaratory judgment action be named as defendants. The title of the action reflects that then-Governor Clinton was also named as a defendant in his capacity as Governor of Arkansas. Because Senator BUMPERS and Senator PRYOR have been named as defendants in this lawsuit, under Arkansas legal procedure, they are required to respond to the complaint.

Mr. President, the U.S. Constitution states three qualifications for an individual to be a U.S. Senator: he or she must have attained 30 years of age, have been a citizen for 9 years, and inhabit at the time of election the State he or she will represent. The qualifications to be a Representative differ only in that a Member of the House must be at least 25 years old, and have been a citizen for 7 years.

Arkansas' determination to limit the terms of its own executive officials and of members of the Arkansas legislature raises no question of Federal law. However, the imposition of a maximum of two terms for U.S. Senators and three terms for U.S. Representatives from Arkansas, through an amendment to the Arkansas State Constitution, necessarily raises the question, as a matter of Federal constitutional law, whether Arkansas has sought impermissibly to add to the uniform qualifications for election to the U.S. Senate and House specified in the Constitution.

The Senate has never taken a position on the precise question of the constitutionality, without amending the Federal Constitution, of States' establishing term limitations for congressional offices. However, the Senate has determined several times that the qualifications enumerated in the Constitution for Senators are the exclusive qualifications permitted under the Constitution and that State laws seeking to impose additional requirements on holding Senate office are invalid under the U.S. Constitution.

The Senate first addressed this question in 1856, when it voted to seat Senator Lyman Trumbull of Illinois, who had been elected notwithstanding a provision of the Illinois State Constitution rendering Illinois State court judges ineligible to Federal office during, or within 1 year of, their State office term. The issue arose when a group of State legislators protested the seating of Senator Trumbull, relying on the State constitutional restriction. The Senate considered whether a State had authority under the U.S. Constitution to add restrictions on election to the Senate other than those set forth in the Constitution. After extensive constitutional debate, the Senate voted to seat Senator Trumbull by a vote of 35 to 8.

Although there was also an issue whether the State law restriction, in fact, applied to the case at hand, because Trumbull had resigned his judgeship more than 1 year before his election to the Senate, an effort to base the Senate's judgment upon that fact was abandoned before the vote was taken. Instead, the overriding view of the Senate, in adopting the resolution to seat Senator Trumbull, was the view of the sponsor of the resolution, Senator Crittenden of Kentucky, that "the Constitution of the United States has assumed to itself the exclusive regulation of this subject, and that no State can add any disqualification or require any new qualification." (Cong. Globe, 34th Cong., 1st sess. 549 (1856).)

In 1887, the Senate voted similarly, without recorded opposition, to seat Senator Charles Faulkner of West Virginia in disregard of a like provision in the West Virginia Constitution. The Senate acted after the chairman of the Committee on Privileges and Elections, Senator Hoar of Massachusetts, reported the committee's unanimous view that "no State can prescribe any qualification to the office of United States Senator in addition to those declared in the Constitution of the United States." (S. Rept. 1, 50th Cong., 1st sess. 4 (1887).)

Most recently, in 1964 the Senate seated Senator Pierre Salinger, who had been appointed by the Governor of California, notwithstanding a California statute, to fill a vacancy upon the death of Senator Engle. The statute in question required, beyond inhabitancy at the time of election, that Senators be qualified as electors in California elections, which Salinger was not because he had not been a resident of the State for the requisite period of time provided under State law.

The Committee on Rules and Administration reported to the Senate that "[i]t is well settled that the qualifications established by the U.S. Constitution for the office of U.S. Senator are exclusive, and a State cannot, by constitutional or statutory provisions, add to or enlarge upon those qualifications." (S. Rept. 1381, 88th Cong., 2d sess. 5 (1964).) A number of the Senate's most esteemed constitutional scholars on both sides of the aisle, including Senator Ervin of North Carolina and Senator Cooper of Kentucky, supported the committee's conclusion. Senator Cooper explained that his study of the constitutional question required him to reject the view that "there could be 50 qualifications enacted by the 50 different States as to appointed Members," (110 Cong. Rec. 19412 (1964)) and to conclude that the constitutional qualifications for appointed and elected members were the same. the Senate agreed, determining to seat Senator Salinger notwithstanding the State limitation.

In 1969, the Supreme Court decided, as the Senate had long concluded, that the constitutionally prescribed qualifications for election to Congress are exclusive. In the case of *Powell* v. *McCormack*, 395 U.S. 486, which concerned the seating of Representative Adam Clayton Powell, the Supreme Court held that the House of Representatives could not add any qualifications in judging a Representative-elect's eligibility for office, beyond the qualifications enumerated in the Constitution for election to the House of Representatives.

Thus, although the adoption of term limitations by the States for congres-

sional offices is a relatively recent phenomenon, the settled underlying constitutional principle is that the U.S. Constitution fixes the qualifications for Federal legislators, and that it would take a Federal constitutional amendment to alter, or to authorize the alteration of, those qualifications. Consistent with that principle, and, importantly, the Senate's adherence to it, it is the intention of Senators BUMPERS and PRYOR to state in answering the complaint that article V of the U.S. Constitution, on amending the Constitution, sets forth the exclusive methods for altering the qualifications for Federal legislators.

Indeed, amending the Constitution was the procedure that was used in 1951 when the 22d amendment established a two-term maximum for the President of the United States. Constitutional amendments to impose limits on congressional terms have been introduced in recent Congresses and have a already been introduced in this session. The submission of these proposals reflects the understanding that, under the Constitution, it is for this body and the other House, or the State legislatures in calling for a convention, to consider initially the policy arguments for and against limiting the terms of Members of Congress.

Senator BUMPERS and Senator PRYOR have advised the leadership that they do not intend to take an active role at the current stage of this litigation, in which they find themselves as defendants, not as plaintiffs or intervenors. However, as defendants, they have a responsibility to respond to the complaint and to communicate to the court about their legal status in the suit.

The resolution at the desk would authorize the Senate legal counsel to represent Senator BUMPERS and Senator PRYOR to fulfill their responsibilities to the court as defendants named solely by virtue of their status as Senators, and to answer the complaint in a manner consistent with the precedents of the Senate. If the future course of this litigation appears, in the view of the Senators, to warrant more active participation on their behalf, they and the Senate legal counsel will seek guidance from the joint leadership group.

The PRESIDING OFFICER. Without objection, the resolution is agreed to, and the preamble is agreed to.

The resolution (S. Res. 63), with its preamble, read as follows:

S. RES. 63

Whereas, in the case of Bobbie Hill v. Bill Clinton, et al., No. 92-6171, pending in the Circuit Court of Pulaski County, Arkansas, the Plaintiff has named, among others, Senator Dale Bumpers and Senator David Pryor as defendants;

Whereas, pursuant to sections 703(a) and 704(a)(1) of the Ethics in Government Act of 1978, 2 U.S.C. §§288b(a) and 288c(a)(1), the Senate may direct its counsel to defend Members of the Senate in civil actions relating to their official or representative capacity: Now, therefore, be it

Resolved, That the Senate Legal Counsel is directed to represent Senator Dale Bumpers and Senator David Pryor in the case of Bobbie Hill v. Bill Clinton, et al.

Mr. MITCHELL. Mr. President, I move to reconsider the vote by which the resolution was agreed to.

Mr. DOLE. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

ACTION VITIATED—S. 267

Mr. MITCHELL. Mr. President, I am advised that the discharge of S. 267 as previously approved was premature and had not been satisfactorily cleared.

So I ask unanimous consent that the prior action in which S. 267 was discharged from the Governmental Affairs Committee and referred to the Labor and Human Resources Committee be vitiated.

The PRESIDING OFFICER. Without objection, it is so ordered.

EXECUTIVE REPORTS OF COMMITTEES

The following executive reports of committees were submitted:

By Mr. ROCKEFELLER, from the Committee on Veterans' Affairs:

Hershel Wayne Gober, of Arkansas, to be Deputy Secretary of Veterans' Affairs.

By Mr. DECONCINI, from the Select Committee on Intelligence:

R. James Woolsey, of Maryland, to be Director of Central Intelligence.

(The above nomination was reported with the recommendation that he be confirmed, subject to the nominee's commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.)

By Mr. RIEGLE, from the Committee on Banking, Housing and Urban Affairs:

Laura D'Andrea Tyson, of California, to be a member of the Council of Economic Advisers.

(The above nomination was approved subject to the nominee's commitment to appear and testify before any duly constituted committee of the Senate.)

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second time by unanimous consent, and referred as indicated:

By Mr. GRAMM:

S. 280. A bill to extend the temporary suspension of duty on fresh cantaloupes imported between January 1 and May 15 of each year; to the Committee on Finance.

By Mr. MCCAIN (for himself and Mr. DECONCINI):

S. 281. A bill to establish certain environmental protection procedures within the area comprising the border region between the United States and the Republic of Mexico; to the Committee on Foreign Relations.

By Mr. SHELBY (for himself, Mr. INOUYE, and Mr. HEFLIN):

S. 282. A bill to provide Federal recognition of the Mowa Band of Choctaw Indians of Alabama; to the Select Committee on Indian Affairs.

By Mr. GRASSLEY (for himself, Mr. HEFLIN, and Mr. CONRAD):

S. 283. A bill to extend the period during which chapter 12 of title 11 of the United States Code remains in effect and for other purposes; to the Committee on the Judiciary.

By Mr. PRESSLER:

S. 284. A bill to amend the Food Stamp Act of 1977 to permit a State agency to require households residing on reservations to file periodic reports of income and household circumstances, and to remove the requirement that a State agency establish a procedure for staggered issuance of coupons for eligible households residing on reservations, and for other purposes; to the Select Committee on Indian Affairs.

By Mr. ROTH:

S. 285. A bill to amend the Internal Revenue Code of 1986 to require reporting of group health plan information on W-2 forms, and for other purposes; to the Committee on Finance.

By Mr. PELL (for himself and Mrs. KASSEBAUM):

S. 286. A bill to reauthorize funding for the Office of Educational Research and Improvement, to provide for miscellaneous education improvement programs, and for other purposes; to the Committee on Labor and Human Resources.

By Mr. AKAKA (for himself and Mr. INOUYE):

S. 287. A bill to amend the Employee Retirement Income Security Act of 1974 with respect to the preemption of the Hawaii Prepaid Health Care Act, and for other purposes; to the Committee on Labor and Human Resources.

By Mr. DORGAN:

S. 288. A bill to amend the Internal Revenue Code of 1986 to provide a reduction in the capital gains tax on individuals, and for other purposes; to the Committee on Finance.

By Mr. REID (for himself, Mr. PRYOR, Mr. DANFORTH, Mr. KEMPTHORNE, Mr. LUGAR, Mr. MCCAIN, Mr. WARNER, Mr. BRYAN, Mr. COHEN, and Mr. GRAHAM):

S. 289. A bill to amend section 118 of the Internal Revenue Code of 1986 to provide for certain exceptions from rules for determining contributions in aid of construction, and for other purposes; to the Committee on Finance.

By Mr. MACK:

S. 290. A bill to provide for the cancellation of all existing leases and to ban all new leasing activities under the Outer Continental Shelf Lands Act in the area off the coast of Florida, and for other purposes; to the Committee on Energy and Natural Resources.

By Mr. MURKOWSKI:

S. 291. A bill to amend the Alaska National Interest Lands Conservation Act to improve the management of Glacier Bay National Park, and for other purposes; to the Committee on Energy and Natural Resources.

By Mr. SPECTER:

S. 292. A bill to amend the Internal Revenue Code of 1986 to provide incentives for investments in disadvantaged and women-owned business enterprises; to the Committee on Finance.

By Mr. MCCAIN (for himself, Mr. CAMPBELL, Mr. SIMON, Mrs. KASSEBAUM, Mr. AKAKA, Mr. STEVENS, Mr. GOR-

TON, Mr. MURKOWSKI, and Mr. DASCHLE):

S. 293. A bill to provide for a National Native American Veterans' Memorial; to the Select Committee on Indian Affairs.

By Mr. BINGAMAN (for himself and Mr. DOMENICI):

S. 294. A bill to authorize the Secretary of the Interior to formulate a program for the research, interpretation, and preservation of various aspects of colonial New Mexico history, and for other purposes; to the Committee on Energy and Natural Resources.

By Mr. DURENBERGER (for himself, Mr. KOHL, Mr. BAUCUS, Mr. SMITH, Mr. GRASSLEY, Mr. CAMPBELL, Mr. LEAHY, Mr. KEMPTHORNE, Mr. ROTH, Mr. LUGAR, Mr. COHEN, Mr. BROWN, Mr. SIMPSON, Mr. CONRAD, Mr. BURNS, Mr. DORGAN, Mr. COATS, Mr. JEFFORDS, and Mr. WALLOP):

S. 295. A bill to amend title 23, United States Code, to remove the penalties for States that do not have in effect safety belt and motorcycle helmet traffic safety programs, and for other purposes; to the Committee on Environment and Public Works.

By Mr. BUMPERS (for himself, Mr. PRYOR, Mr. KERREY, Mr. COCHRAN, Mr. BOND, Mr. WOFFORD, Mr. BOREN, Mr. KOHL, Mr. SHELBY, and Mr. REID):

S. 296. A bill to require the Secretary of Agriculture to submit monthly financial obligation and employment reports to Congress for the Food and Safety and Inspection Service, and for other purposes; to the Committee on Agriculture, Nutrition, and Forestry.

By Mr. STEVENS:

S. 297. A bill to authorize the Air Force Memorial Foundation to establish a memorial in the District of Columbia or its environs; to the Committee on Energy and Natural Resources.

By Mr. DECONCINI (for himself, Mr. HATCH, Mr. HEFLIN, Mr. KENNEDY, Mr. KOHL, Mr. LAUTENBERG, Mr. SPECTER, Mr. GRASSLEY, Mr. BROWN, and Mr. DOMENICI):

S. 298. A bill to amend title 35, United States Code, with respect to patents on certain processes; to the Committee on the Judiciary.

By Mr. RIEGLE (for himself, Mr. JEFFORDS, Mr. SIMON, Mr. LEVIN, Mrs. BOXER, Ms. MOSELEY-BRAUN, and Mr. DODD):

S. 299. A bill to amend the Housing and Community Development Act of 1974 to establish a program to demonstrate the benefits and feasibility of redeveloping or reusing abandoned or substantially underutilized land in economically and socially distressed communities, and for other purposes; to the Committee on Banking, Housing, and Urban Affairs.

By Mr. MACK:

S. 300. A bill to provide for the utilization of the latest available census data in certain laws related to airport improvements; to the Committee on Commerce, Science, and Transportation.

By Mr. DASCHLE (for himself, Mr. LEVIN, and Mr. JOHNSTON):

S. 301. A bill to revive and strengthen the "Super 301" authority of the United States Trade Representative to eliminate unfair trade barriers, and for other purposes; to the Committee on Finance.

By Mr. MACK:

S. 302. A bill to provide for the utilization of the latest available census data in certain laws related to Energy and Natural Resources; to the Committee on Energy and Natural Resources.

S. 303. A bill to provide for the utilization of the most current census data in certain laws related to the environment and public works; to the Committee on Environment and Public Works.

S. 304. A bill to provide for the utilization of the latest available census data in certain laws related to urban mass transportation; to the Committee on Banking, Housing, and Urban Affairs.

S. 305. A bill to utilize the most current Federal census data in the distribution of Federal funds for agriculture, nutrition, and forestry; to the Committee on Agriculture, Nutrition, and Forestry.

S. 306. A bill to provide interim current census data on below poverty, urban, rural, and farm populations; to the Committee on Governmental Affairs.

S. 307. A bill to require that, in the administration of any benefits program established by or under Federal law which requires the use of data obtained in the most recent decennial census, the 1990 adjusted census data be considered the official data for such census; to the Committee on Governmental Affairs.

S. 308. A bill to require the use, in Federal formula grant programs, of adjusted census data, and for other purposes; to the Committee on Governmental Affairs.

By Mr. D'AMATO (for himself and Mr. LIEBERMAN):

S.J. Res. 39. Joint resolution designating the weeks beginning May 23, 1993, and May 15, 1994, as Emergency Medical Services Week; to the Committee on the Judiciary.

By Mr. KENNEDY (for himself, Mr. AKAKA, Mr. BAUCUS, Mr. BIDEN, Mr. BINGAMAN, Mrs. BOXER, Mr. BRADLEY, Mr. CHAFEE, Mr. COHEN, Mr. CONRAD, Mr. DASCHLE, Mr. DECONCINI, Mr. DODD, Mr. DORGAN, Mr. DURENBERGER, Mr. FEINGOLD, Mrs. FEINSTEIN, Mr. GLENN, Mr. GRAHAM, Mr. HARKIN, Mr. HATFIELD, Mr. HOLLINGS, Mr. JEFFORDS, Mr. JOHNSTON, Mrs. KASSEBAUM, Mr. KERRY, Mr. LAUTENBERG, Mr. LEAHY, Mr. LIEBERMAN, Mr. LEVIN, Mr. METZENBAUM, Ms. MIKULSKI, Mr. MITCHELL, Ms. MOSELEY-BRAUN, Mr. MOYNIHAN, Mrs. MURRAY, Mr. PACKWOOD, Mr. PELL, Mr. RIEGLE, Mr. ROBB, Mr. ROCKEFELLER, Mr. SARBANES, Mr. SIMON, Mr. SPECTER, and Mr. WELLSTONE):

S.J. Res. 40. Joint resolution proposing an amendment to the Constitution of the United States relative to equal rights for women and men; to the Committee on the Judiciary.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. D'AMATO:

S. Res. 60. Resolution supporting United States requests to reopen the December 20, 1991 draft final text in the Uruguay round to address areas of particular concern to United States manufactures, environmental and consumer groups; to the Committee on Finance.

By Mr. ROTH:

S. Res. 61. Resolution amending the Standing Rules of the Senate; to the Committee on Rules and Administration.

By Mr. MITCHELL (for himself and Mr. DOLE):

S. Res. 62. Resolution to direct the Senate Legal Counsel to appear as amicus curiae in the name of the Senate in Turner Broadcasting System, Inc., et al. v. Federal Communications Commission, et al. and consolidated cases; considered and agreed to.

S. Res. 63. Resolution to authorize representation of Members of the Senate in the case of Bobbie Hill v. Bill Clinton, et al; considered and agreed to.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. MCCAIN (for himself and Mr. DECONCINI):

S. 281. A bill to establish certain environmental protection procedures within the area comprising the border region between the United States and the Republic of Mexico; to the Committee on Foreign Relations.

UNITED STATES-MEXICO BORDER ENVIRONMENTAL PROTECTION ACT

Mr. MCCAIN. Mr. President, today, I rise to introduce the United States-Mexico Border Environmental Protection Act.

My colleagues may remember this measure from last year. I introduced it then in response to concerns about the condition of the environment along our border with Mexico. It was reported by the Senate Foreign Relations Committee. Sadly, it was never agreed upon by full Senate. In that year's time, because of our inaction, the environment in the border region has continued to degrade, increasing the risk to public health and safety.

Our Nation shares a 2,000 mile border with Mexico. Numerous American and Mexican sister cities link hands across that border, binding our two nations in friendship. As friends and neighbors, the United States and Mexico have profound responsibilities to one another. Chief among those duties is to respect and safeguard the natural resources our citizens must share along the international boundary. No activities or conditions occurring on one side of the border must be permitted to adversely impact the health of people or the environment on the other.

Passage of the United States-Mexico Border Environmental Protection Act will help us meet our environmental responsibilities successfully. It will do so by promoting pollution prevention in the region through resource monitoring and long-term planning. Second, recognizing that environmental accidents do occur and sometimes political expectations are not fulfilled it provides the resources necessary to protect American lives and property from environmental hazards which may arise unabated south of the border—an important Federal responsibility.

Specifically, to address environmental threats, the bill seeks to establish a $10 million border environmental emergency fund under the auspices of the Environmental Protection Agency. The fund would make money readily available to investigate occurrences of

pollution, identify sources and take immediate steps to protect land, air, and water resources through cleanup and other remedial actions.

While the EPA can address many problems along the border, some issues involving the protection of surface waters are under the jurisdiction of the International Boundary Water and Water Commission. The commission was created by a treaty with Mexico in 1944 to control floods, manage salinity, and develop municipal sewage treatment facilities along international streams.

In my home State, the IBWC has constructed international wastewater treatment facilities in Nogales and Naco, AZ. The Commission's authority, however, to respond to emergency situations involving the pollution of surface waters is a matter of some doubt. This measure provides the IBWC with explicit authority and resources to protect American lives and property from emergency conditions and establishes a $5 million fund to do the job. In addition, the Secretary of State is directed to pursue agreements with Mexico for joint response to such events.

Mr. President, I'd like to offer an example of why this legislation is needed. A little more than a year ago, the breakage of a sewer main combined with heavy rains to carry raw sewage into Nogales, AZ, via an international stream. The contamination resulted in a high incidence of hepatitis, harmed wildlife, and degraded public and private property, prompting the declaration of a State emergency. No definitive and comprehensive action was taken to stem the flow of sewage for several weeks due to concerns about the availability of funds and trepidation about the legal authority necessary to take action.

Had the emergency fund and response authority I'm proposing been in place, perhaps we could have prevented much of the sickness and suffering visited upon the residents of Nogales. Passage of this legislation will ensure prompt and effective response in the future.

I would like to note that certain provisions related to the IBWC in this bill are virtually identical to those in the Rio Grande Pollution Correction Act which was signed into law in 1987. Like the bill I'm introducing, the Rio Grande legislation authorized the IBWC to conclude agreements with Mexico to respond to surface water contamination. The United States-Mexico Border Environmental Protection Act expands the Rio Grande bill to include the entire border, as a matter of fairness and necessity.

In addition to funding field investigations and rapid emergency response, the legislation recognizes the importance of communication between Mexico and the United States, and among Federal, State, and local authorities here at home. The bill seeks to establish an information sharing and early warning system so that Mexican and American officials at all levels will be apprised of environmental hazards and risks in a timely and coordinated fashion, so that response and remedy, likewise, will be timely and coordinated.

The EPA and IBWC funds will ensure comprehensive and timely response to hazards as they arise along the border. The long-term answer, however, is planning and prevention. In that regard, the bill seeks to bolster attention on the border environment and promote planning so that emergencies can be avoided. It calls for the establishment of domestic and binational advisory committees on the border environment. These groups would help monitor environmental conditions along the border, as well as to plan and make recommendations for the continued protection of the region's air, land, and water resources.

Passage of this bill is critical to the protection of the border environment and with the maintenance of harmonious and productive relations with our friends to the south. Mexico recognizes the importance of this initiative as well. When I visited President Salinas a year ago, he agreed on the need and told me that if Congress created such an account, Mexico would do the same.

Mr. President, there is no doubt of our obligation to be a responsible neighbor to Mexico, nor of Mexico's obligation to us. Considering our current efforts to open the doors of commerce between our nations, now more than ever, it is important that we commit ourselves to a clean and healthy border environment for the safety and enjoyment of Americans and Mexicans who inhabit the region. Enactment of this legislation is the first and most important step to that end.

I urge the Senate to consider and swiftly pass this vital legislation. I ask unanimous consent that a statement from Senator DECONCINI regarding this measure and the text of the bill be printed at this point in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

S. 281

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "United States-Mexico Border Environmental Protection Act".

SEC. 2. PURPOSE.

It is the purpose of this Act to provide for the protection of the environment within the area comprising the border region between the United States and the Republic of Mexico, as defined by the La Paz Agreement between the United States and Mexico, referred to hereafter as the "Border Environment Zone".

SEC. 3. FUND.

(a) ESTABLISHMENT OF FUND.—There is established in the Treasury of the United States the "United States-Mexico Border Environmental Protection Fund (hereinafter referred to as the "Fund"). The Fund shall consist of such amounts as may be appropriated or transferred to the Fund. No moneys in the Fund shall be available for obligation or expenditure except pursuant to an environmental emergency declaration pursuant to section 4.

(b) PURPOSE OF THE FUND.—The Fund shall be readily available for use by the Administrator of the Environmental Protection Agency (hereinafter referred to as the "Administrator") to investigate and respond to conditions which the Administrator determines present a substantial threat to the land, air, or water resources of the area comprising the border region of the United States and the Republic of Mexico.

(c) USES OF FUND.—(1) Moneys in the Fund shall be available, without fiscal year limitation, for use by the Administrator in carrying out field investigations and remediation of any environmental emergency declared by the Administrator under this Act.

(2) In carrying out his authority under this Act, the Administrator is authorized to expend moneys in the Fund directly or make such moneys available through grants or contracts.

(3) Moneys in the Fund shall be available for use by the Administrator for cost-sharing programs with the Republic of Mexico, any of the States of Arizona, California, New Mexico, or Texas, any political subdivision of any such State, any local emergency planning committee, federally recognized Indian tribes, or any other appropriate entity, for use in carrying out field investigations and remediation actions pursuant to this Act.

SEC. 4. DECLARATION OF ENVIRONMENTAL EMERGENCY.

(a) DETERMINATION BY ADMINISTRATOR.—The Administrator, whenever he determines conditions exist which present a substantial threat to the land, air, or water resources of the area comprising the Border Environment Zone, may declare the existence of an environmental emergency in such region. In no case shall the Administrator declare a condition an emergency under this section if such condition is specifically within the sole jurisdiction of the International Boundary and Water Commission.

(b) CONSULTATION WITH AFFECTED PARTIES; AUTHORITY TO RESPOND.—In responding to emergencies, the Administrator shall consult and cooperate with affected States, counties, municipalities, Indian tribes, the Republic of Mexico, and other affected parties. The Administrator may respond directly to an emergency declared under this section or may coordinate with appropriate State or local authorities to respond.

(c) PETITION OF GOVERNOR.—In addition to the authority under subsection (a), the Administrator, upon the petition of the Governors of the States of Arizona, California, New Mexico, or Texas, or the governing body of a Federally recognized Indian tribe, may declare the existence of an environmental emergency in such region. In no case shall the Administrator declare a condition an emergency under this section if such condition is specifically within the sole jurisdiction of the International Boundary and Water Commission.

SEC. 5. INFORMATION SHARING.

The Administrator, in cooperation with the Secretary of State, the Governors of the States of Arizona, California, New Mexico, or Texas, and the governing bodies of Federally recognized Indian tribes located within the United States-Mexico border region, and the

Republic of Mexico, is authorized to establish a system for information sharing and for early warning to the United States, each of the several States and political subdivisions thereof, and Indian tribes, of environmental problems affecting the Border Environment Zone. The Administrator shall integrate systems and procedures authorized by this section into any existing systems and procedures established to provide information sharing and early warning regarding environmental problems affecting the Border Environment Zone.

SEC. 6. REPORT TO CONGRESS.

The Administrator, after consultation with the Secretary of State, the Republic of Mexico, the Governors of the States of Arizona, California, New Mexico, and Texas, and the tribal governments of appropriate Indian tribes, shall submit an annual report to the Congress on the use of the Fund during the calendar year preceding the calendar year in which such report is filed, and the status of the environmental quality of the area comprising the Border Environment Zone. The Administrator shall publish the availability of the report in the Federal Register, along with a brief summary.

SEC. 7. ADVISORY COMMITTEE.

(a) ESTABLISHMENT.—The Administrator shall establish a United States-Mexico Border Environmental Protection Advisory Committee (hereinafter referred to as the "Advisory Committee").

(b) FUNCTIONS.—It shall be the function of the Advisory Committee to—

(1) monitor and study environmental conditions within the Border Environment Zone;

(2) plan and make recommendations for ongoing environmental protection within such border region; and

(3) carry out such other functions as the Administrator may prescribe.

(c) COMPOSITION OF ADVISORY COMMITTEE.—The Advisory Committee shall consist of such number as the Administrator shall appoint. At least one member shall be from the Department of State. At least 2 of the members shall be from business, 2 from non-Government organizations, and 5 from State, local or tribal governments. The term of each member shall be for a period of not more than 5 years, specified by the Administrator at the time of appointment. Before filling a position on the Advisory Committee, the Administrator shall publish a notice in the Federal Register soliciting nominations for membership on the Advisory Committee.

(d) MEETINGS AND REPORTS.—The Advisory Committee shall meet at least on a quarterly basis, and report to the President and Congress not less than annually, on the state of the Border Environment Zone; together with the recommendations of the Advisory Committee, if any. The initial report shall be submitted within 12 months following the date of the enactment of this Act.

(e) COMPENSATION.—Members of the Advisory Committee shall serve without compensation. When serving away from home or regular place of business, a member may be allowed travel expenses, including per diem in lieu of subsistence as authorized by section 5703 of title 5, United States Code, for individuals employed intermittently in the Government service.

SEC. 8. INTERNATIONAL AGREEMENTS.

(a) AUTHORITY.—The Secretary of State, acting through the United States Commissioner, International Boundary and Water Commission, United States and Mexico (hereafter "United States Commissioner") is authorized to conclude agreements with the appropriate representative of the Ministry of Foreign Relations of Mexico for the purpose of correcting border sanitation problems in international streams that form or cross the international boundary between the United States and the Republic of Mexico, caused by the discharge of untreated or inadequately treated sewage into such streams.

(b) RECOMMENDATIONS.—Agreements concluded under subsection (a) should consist of recommendations to the Governments of the United States and the Republic of Mexico of measures to protect the health and welfare of persons along those international streams that cross the international boundary between the United States and the Republic of Mexico, and should include—

(1) facilities that should be constructed, operated, and maintained in each country;

(2) estimates of the costs of plans, construction, operation, and maintenance of such facilities;

(3) formulas for the division of costs between the United States and the Republic of Mexico; and

(4) time schedule for the construction of facilities and other measures recommended within the agreements authorized by this section.

SEC. 9. JOINT RESPONSES TO SANITATION EMERGENCIES.

(a) CONSTRUCTION OF WORKS.—The Secretary of State, acting through the United States Commissioner, is authorized to conclude agreements with the appropriate representative of the Ministry of Foreign Relations of the Republic of Mexico for the purpose of joint response through the construction of works, repair of existing infrastructure, and other such appropriate measures in the Republic of Mexico and the United States to correct border sanitation emergencies in international streams that form or cross the international boundary between the United States and the Republic of Mexico caused by the discharge of untreated or inadequately treated sewage into such streams. The United States Commissioner shall consult with the Governors of the States of Arizona, California, New Mexico, and Texas in developing and implementing agreements under this section.

(b) HEALTH AND WELFARE.—Agreements concluded under subsection (a) should consist of recommendations to the Governments of the United States and the Republic of Mexico establishing general response plans to protect the health and welfare of persons along those international streams that form or cross the international boundary between the United States and the Republic of Mexico, and should include, but not be limited to—

(1) description of types of border sanitation emergencies requiring response including, but not limited to, sewer line breaks, power interruptions to wastewater handling facilities, components breakdowns to wastewater handling facilities, and accidental discharge of sewage, which result in the pollution of streams that form or cross the international boundary;

(2) description of types of response to emergencies including, but not limited to, acquisition, use and maintenance of joint response equipment and facilities, small scale construction, including modifications to existing infrastructure and temporary works, and the installation of emergency and standby power facilities;

(3) formulas for distribution of costs of responses to emergencies under this section on a case-by-case basis; and

(4) requirements for defining the beginning and end of an emergency.

SEC. 10. CONSTRUCTION; REPAIRS; AND OTHER MEASURES.

(a) DEFINITION.—As used in this Act, the term "border sanitation emergency" means a situation in which untreated or inadequately treated sewage is discharged into surface rivers or streams that form or cross the boundary between the United States and the Republic of Mexico.

(b) WATER POLLUTION EMERGENCIES.—The Secretary of State, acting through the United States Commissioner, is authorized to respond through construction, repairs and other measures in the United States to correct "border" sanitation emergencies in international streams that form or cross the international boundary between the United States and the Republic of Mexico, caused by the accidental discharge of untreated or inadequately treated sewage into such streams.

(c) CONSULTATION WITH AFFECTED PARTIES; AUTHORITY TO RESPOND.—In responding to a border sanitation emergency, the Secretary shall consult and cooperate with the Administrator, affected States, counties, municipalities, Indian tribes, the Republic of Mexico, and other affected parties. The Secretary of State may respond to a border sanitation emergency or may coordinate with appropriate State or local authorities to respond.

SEC. 11. BINATIONAL ADVISORY COMMITTEE.

(a) ESTABLISHMENT.—The Secretary of State, in cooperation with the Administrator, is authorized to enter into an agreement or other arrangement with the Republic of Mexico to establish an Advisory Committee comprised of members from the Republic of Mexico and the United States.

(b) FUNCTIONS.—It shall be the functions of the Binational Advisory Committee to (1) assist EPA and SEDUE in the monitoring and study of environmental conditions within the border region of the United States and Mexico; (2) plan and make recommendations to EPA and SEDUE for on-going environmental protection within such border region; and (3) carry out such other functions as EPA and SEDUE may prescribe.

(c) COMPOSITION.—The United States Delegation shall consist of such number as the Administrator shall appoint. At least two of the members shall be from business, two from nongovernment organizations, and five from State or local governments. The term of each member shall be for a period of not more than five years, specified by the Administrator at the time of appointment. Before filling a position on the Advisory Committee, the Administrator shall publish a notice in the Federal Register soliciting nominations for membership on the United States Advisory Committee.

(d) AVAILABILITY OF COMMITTEE RECORDS TO THE PUBLIC.—The Binational Advisory Committee shall make all reasonable efforts to make available to the public information on environmental conditions in the border region and efforts the Committee undertakes or recommends to address these conditions.

SEC. 12. TRANSFER OF FUNDS.

(a) TRANSFER AUTHORITY.—The Secretary of State, acting through the United States Commissioner, is authorized to include as part of the agreements authorized by sections 8, 9, and 10 of this Act, the necessary arrangements to administer the transfer to another country of funds assigned to one country and obtained from Federal or non-Federal governmental or nongovernmental sources.

(b) COST-SHARING AGREEMENTS.—No funds of the United States shall be expended in the

Republic of Mexico for emergency investigation or remediation pursuant to section 8, 9, or 10 of this Act absent a cost-sharing agreement between the United States and the Republic of Mexico unless the Secretary of State has determined and can demonstrate that the expenditure of such funds in the Republic of Mexico would be cost-effective and in the interest of the United States. In cases where funds of the United States are expended in the Republic of Mexico without a cost-sharing agreement, the Secretary of State shall submit a report to the appropriate committees of Congress explaining why costs were not shared between the United States and the Republic of Mexico, and why the expenditure of such funds without cost-sharing was in the national interest of the United States.

(c) ESTABLISHMENT OF FUND.—(1) There is established in the Treasury of the United States the United States International Boundary and Water Commission Fund (hereinafter referred to as the "Commission Fund"). The Commission Fund shall consist of such amounts as may be appropriated or transferred to the Commission Fund.

(2) Moneys in the Commission Fund shall be available, without fiscal year limitation, for use by the Secretary of State in carrying out the provisions of this section and sections 8, 9, 10 and 11 of this Act.

(3) In carrying out the purposes of this section and sections 8, 9, 10 and 11 of this Act, the Secretary of State is authorized to expend moneys in the Commission Fund directly or make such moneys available to fulfill the purposes of any such section through grants or contracts.

SEC. 13. AUTHORIZATION.

(a) AUTHORIZATION FOR THE FUND.—There is authorized to be appropriated to the Fund $10,000,000, for use in accordance with the purposes of this Act.

(b) AUTHORIZATION FOR ADVISORY COMMITTEE.—There is authorized to be appropriated to the Administrator $500,000 for support and operation of the Advisory Committee.

(c) AUTHORIZATION FOR INTERNATIONAL BOUNDARY AND WATER COMMISSION FUND.—There is authorized to be appropriated to the International Boundary and Water Commission Fund $5,000,000 for carrying out sections 8, 9, 10, 11 and 12 of this Act.

(d) AVAILABILITY OF FUNDS.—All amounts appropriated pursuant to this Act shall remain available until expended.

SEC. 14. DISCLAIMER.

Nothing in this Act shall be construed as amending, repealing or otherwise modifying any provision of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, the Superfund Amendments and Reauthorization Act of 1986, or any other law, treaty or international agreement of the United States.

Mr. DECONCINI. Mr. President, I am pleased to join my colleague, Senator MCCAIN, as an original cosponsor of the United States-Mexico Environmental Protection Act. This legislation responds to a real and current threat to the health and environment of those citizens living along our border with Mexico.

As many of my colleagues know, I have long been concerned about the unique nature of binational environmental problems facing the United States and Mexico. The environment does not recognize the artificial boundaries. Because of the unique geographic and ecological characteristics of this region, border communities share common aquifers, and air supplies. If those resources are degradated, citizens of both countries suffer.

The legislation we are introducing today will enable the EPA and the State Department to respond to urgent environmental situations in an emergency fashion. This legislation is particularly important in light of past and future potential pollution problems of the water supply in Nogales, AZ. And, the importance of this legislation will grow for all of the States along the border as negotiations continue for a free trade agreement. For the benefit of my colleagues, untreated sewage from Nogales, Sonara, was being discharged from damaged sewage lines into Nogales Wash, threatening drinking water supplies which service the communities on both sides of the border. Mexico lacks the resources to adequately respond to infrastructure deficiencies such as what occurred in Nogales. This legislation will provide the resources needed to rapidly respond to this situation.

The United States-Mexico Environmental Protection Act also calls for extensive monitoring of environmental problems along the border. In my experience in working on these problems, one fact is clear to me; there is a definite lack of substantial information on the environmental issues along the border. This legislation will go a long way toward rectifying this problem.

Mr. President, I want to commend Senator MCCAIN for his initiative in this regard. With the United States-Mexico Environmental Protection Act, he has recognized a critical need and has responded to it. I look forward to working with him to see that this legislation is enacted.

By Mr. SHELBY (for himself, Mr. INOUYE, and Mr. HEFLIN):

S. 282. A bill to provide Federal recognition of the Mowa Band of Choctaw Indians of Alabama; to the Select Committee on Indian Affairs.

MOWA BAND OF CHOCTAW INDIANS RECOGNITION ACT

• Mr. SHELBY. Mr. President, I rise today to reintroduce the Mowa Band of Choctaw Indians Recognition Act. This is the fourth time that I have introduced this measure in the Senate. I hope that this is the last time I will introduce this bill because the 103d Congress will have seen the measure passed and signed into public law.

On October 5, 1992, we came very close to moving this bill from the Halls of Congress to the White House. The Mowa bill passed the Senate. However, the bill died in the House Interior Committee. And so, I introduce the bill again because I believe strongly in this legislation. In fact, the more time that passes, the more I am convinced of the authenticity of the Mowa claim.

Others have already recognized the Mowa Band of Choctaws as an Indian tribe.

In 1979, the U.S. Department of Education awarded one of the first Indian education programs in Alabama with title V funding. Title V funding is set aside for Indian children who are being educated in the public school system. That Alabama Indian Education Program, which has received title V funding from the Department of Education every year since 1979, is administered by the Mowa Band of Choctaw Indians.

The U.S. Department of Health and Human Services' Administration for Native Americans has awarded more than $1,150,000 to the Mowa Choctaw tribal government for economic development.

The U.S. Department of Housing and Urban Development found the Mowa Choctaw Housing Authority eligible to participate in all HUD Indian housing programs.

These Government agencies have recognized the Mowa Choctaws as an Indian tribe. However, the Mowas still are not federally recognized. Since the 1880's, ancestors of today's Mowas have consistently sought Federal recognition as an Indian tribe. Each time the U.S. Government opened the rolls, the tribe applied. They finally achieved State recognition in 1978 and it is time that Congress acted to give them Federal recognition.

Over two centuries have passed since a group of native Americans settled in Mobile and Washington Counties, AL. The name Mowa, derived from the first two letters of their geographic location, Mobile and Washington Counties, was taken by the more than 7,000 descendants of the Choctaw Indians settling in south Alabama. These individuals are the beneficiaries of a proud heritage from a group of Indians who refused to migrate from their homeland during the infamous "Trail of Tears."

The direct ancestors of the Mowa Choctaws of Alabama came together in the forks between the Alabama and Tombigbee Rivers, below a stream called the "Cut-Off," which flows from the Alabama River southwest to the Tombigbee.

This basin area between the rivers had always been claimed by both Choctaw and Creek Indians. To settle the dispute, the U.S. Government set the watershed as the boundary line with the creek to the east and the Choctaw to the west. The Mowa community was, and still is on the Choctaw side of the Tombigbee River.

The U.S. Army Corps of Engineers has identified the Mowa area as a prehistoric Indian site. Artifacts attest to Indian occupation long before the arrival of Europeans. However, there are still those who doubt the tribes's claim of being Indian.

The goal of the Mowa's in seeking Federal recognition is to preserve their

community. I believe that, with a little assistance and the cooperation and good faith of their non-Indian neighbors, the Mowa's can improve their standard of living and obtain adequate housing.

As I have stated time and time again, the Mowa Choctaws are a proud, self-respecting people who are fighting a long, hard battle to regain their rightful identity. The Mowa Choctaw Indians enjoy a good relationship with their non-Indian neighbors. They serve with them in local community organizations and in leadership positions. The Mowa's have paid taxes, voted, and served their country from the Civil War through today's Persian Gulf war. They deserve and need the opportunities that Federal recognition will provide.

The opportunities for employment. The opportunities for job training. The opportunities for better education, health care and housing.

I urge my colleagues to join me in helping the Mowa Choctaw's hopes come to fruition.●

By Mr. GRASSLEY (for himself, Mr. HEFLIN, and Mr. CONRAD):

S. 283. A bill to extend the period during which chapter 12 of title 11 of the United States Code remains in effect and for other purposes; to the Committee on the Judiciary.

BANKRUPTCY CODE EXTENSION ACT OF 1993

Mr. GRASSLEY. Mr. President, I rise today to introduce S. 283, to extend until October 31, 1998, chapter 12 of the Bankruptcy Code. Chapter 12, which was first enacted in 1986, provides a mechanism to facilitate the reorganization of family farm bankruptcies. I am pleased that Senator HEFLIN is an original cosponsor of this bill. He is the chairman of the Courts Subcommittee, which has jurisdiction over bankruptcy matters, and I am confident that with his support we can move this bill quickly this year.

Chapter 12 fulfills an important need. Before its creation, family farmers could file for bankruptcy only under chapter 11 or 13. Most farmers could not file under chapter 13 either because their secured debts were too large to qualify, or because they were partnerships or incorporated entities. Chapter 11 presented different difficulties, making that chapter all but unworkable to farmers. When the farm crisis of the 1980's hit, farmers risked losing their farms for reasons beyond their control.

Congress properly recognized these conditions when it enacted chapter 12. In so doing, Congress acted to make sure that bankruptcy laws respond to the special needs of farmers, an approach Congress first took more than 150 years ago, and then again in the 1930's when it passed Frazier-Lemke. Chapter 12 has made bankruptcy realistically available to family farmers.

Under chapter 12, the farmer files a plan within 90 days of filing the bankruptcy petition. The court then completes action within 45 days. The debtor must make available the discretionary income for the next 3 to 5 years to pay unsecured creditors. After the 3- to 5-year period, the unsecured debt is discharged. The debtor must also pay the secured debts up to the market value of the collateral. If the farmer owes more than the property is worth, the difference is treated as an unsecured debt and must be paid out of disposable income for 3 to 5 years.

Because chapter 12 is based on chapter 13, the farmer can remain in control of the farming operation. A trustee is appointed to see that payments are timely made, to investigate fraud if the court so requires, and to operate the farm if the court finds gross mismanagement.

I am pleased to note that chapter 12 has worked very well. As the chapter 12 trustee for Nebraska recently states, "There's no question that we need chapter 12, absolutely no question at all." He called chapter 12 "the most economical fashion for farmers to reorganize," and noted that one of its advantages is to offer farmers a completely fresh start. Since bankruptcy process inefficiencies necessarily reduce the amount available to compensate creditors, chapter 12's efficient operation benefits creditors as well as debtors.

Chapter 12's positive effects are not limited to the Midwest. A Louisiana attorney recently wrote me to say that chapter 12 offers the only real remedy for farm bankruptcy problems. His view is that the program has worked splendidly in Louisiana. Although the farm crisis has eased somewhat since 1986, he states that although he wished that the program is no longer needed, that is simply not the case. He stated:

> The farm economy, nationwide is still quite fragile. Without the benefits of this program, many farmers will be unable to reorganize their operations and will be forced from the land. Because of this program, we have been able to maintain the family farmer in this area and we certainly hope to continue to do so.

I also note that in some States, chapter 12 filings, which had declined somewhat after 1987, have started again to increase.

Chapter 12, like other farm bankruptcy bills, was enacted as a temporary measure, and is currently set to expire on October 31, 1993. I believe that its success warrants its extension, and the bipartisan cosponsorship of this bill extending the life of the program attests to the widespread sharing of that belief. Because the farm economy remains weak, and since the process of passing legislation is often unpredictable, I believe that the program should be extended for 5 years, as opposed to the 2 additional years that the Senate voted for last June as part of the omnibus bankruptcy bill. A 5-year extension will ensure that there is no gap in the event that Congress cannot act quickly enough to extend the program before its expiration.

I look forward to the rapid passage of this measure to ensure that the program continues without interruption.

By Mr. PRESSLER:

S. 284. A bill to amend the Food Stamp Act of 1977 to permit a State agency to require households residing on reservations to file periodic reports of income and household circumstances, and to remove the requirement that a State agency establish a procedure for staggered issuance of coupons for eligible households residing on reservations, and for other purposes; to the Select Committee on Indian Affairs.

INDIAN RESERVATIONS ACT OF 1993

Mr. PRESSLER. Mr. President, I am introducing legislation to amend the Food Stamp Act of 1977. This legislation strikes two provisions regarding food stamp issuance on Indian reservations that were included in the 1990, farm bill (P.L. 101-624).

Many individuals have been involved to resolve this issue, both at State and Federal levels, for more than 2 years now. I commend them for their diligence.

Specifically, the first provision of the 1990 act, section 1723, exempts reservation households from the food stamp program's State option of monthly income reporting. My bill reverses that exemption, which has never been implemented.

Therefore, the current practice of a household giving a food stamp office current information will be maintained. This practice allows for accurate use of food stamp resources. In addition, it allows the members of eligible households to receive services.

The second Farm Bill provision in question requires State agencies to stagger the issuance of food stamp benefits throughout the month for those recipients living on Indian reservations. My legislation reverses this provision.

Mr. President, though this measure was never entered, staggered issuance would be a nightmare in Indian country. Instead of all families being able to travel together to receive food stamps on a designated day each month, they would be forced to go at different times, often over long distances in difficult situations. In fact, transportation difficulties alone would have made this provision an impairment to the very people it was designed to assist.

To illustrate my point, I ask unanimous consent that a November 22, 1992, Washington Post article entitled "On Sioux Reservation, Transportation Literally Means Life or Death" be included in the RECORD following my remarks.

Mr. President, I also ask unanimous consent that two letters in agreement

with my legislation also be included in the RECORD at the conclusion of my remarks.

The first letter, dated November 25, 1992, is from the General Accounting Office [GAO] to my colleagues, Senator LEAHY, chairman of the Agriculture Committee and Senator LUGAR, ranking Republican. In this letter, the GAO states that both provisions are opposed by State programs and Indian organizations that submitted comments.

In addition, I would like to submit a letter, dated April 7, 1992, from the South Dakota Department of Social Services to the GAO providing additional data regarding these two food stamp provisions.

Mr. President, I believe in the concept, "if it isn't broke, don't fix it." Current food stamp practices are working well according to both those administering the services and those receiving the services. Until such time that this changes, let's maintain the present system and focus on problems that do exist and do need to be solved.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD at the conclusion of my remarks. I urge my colleagues to support this cost-effective administrative change in our food stamp program.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

S. 283

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. REPORTING AND STAGGERED ISSUANCE FOR HOUSEHOLDS ON RESERVATIONS

(a) BUDGETING AND MONTHLY REPORTING ON RESERVATIONS.—Section 6(c)(1)(A) of the Food Stamp Act of 1977 (7 U.S.C. 2015(c)(1)(A)) is amended—

(1) by striking clause (ii); and

(2) by redesignating clauses (iii) and (iv) as clauses (ii) and (iii), respectively.

(b) STAGGERED ISSUANCES ON RESERVATIONS.—Section 7(h)(1) of such Act (7 U.S.C. 2016(h)(1)) is amended by striking the second sentence.

(c) CONFORMING AMENDMENTS.—

(1) Subtitle A of title IX of the Food, Agriculture, Conservation, and Trade Act Amendments of 1991 (Public Law 102–237) is amended by repealing section 908.

(2) Section 5(f)(2)(C) of the Food Stamp Act of 1977 (7 U.S.C. 2014(f)(2)(C)) is amended by striking "(iii), and (iv)" and inserting "and (iii)".

[From the Washington Post, Nov. 22, 1992]

ON SIOUX RESERVATION, TRANSPORTATION LITERALLY MEANS LIFE OR DEATH

(By Don Phillips)

PINE RIDGE, S.D.—The need for transportation dominates the lives of the Oglala Sioux in ways that city dwellers would find difficult to understand.

Even a trip from homes scattered about the remote Pine Ridge Indian Reservation to grocery stores here, the reservation's largest town, is an event. Some people begin walking before dawn for a 40-mile round trip to the store, returning after dark.

"They're used to walking because there's no transportation on the reservation at all, and it's a big reservation," said Marguerite Very-Miller, a onetime VISTA volunteer among the Oglala Sioux who now runs the Sheridan County Public Transportation System just over the state line in Nebraska. It is a well-run dial-a-ride service that stands in stark contrast to the transit poverty of the reservation. "If I had my dreams, I'd just run up and down the highway so I could pick up people who are walking."

When it comes to mobility, America has become a nation of haves and have-nots. The story has been told often: Rural communities have been left with deteriorating bus service; local train service disappeared years ago; local dial-a-ride van services are subject to the whims of county governments and a static-to-declining federal subsidy.

The plight of the have-nots of transportation is uniquely displayed on the Pine Ridge reservation, a vast expanse of rolling green hills and badlands where soldiers massacred more than 200 followers of Sitting Bull in 1890 at Wounded Knee.

Many residents do not own cars. There is no public transit system.

With a constant 85 percent unemployment rate, most Oglala Sioux residents find it difficult even to pay for a ride. Throughout the reservation, sometimes arrogant young men charge exorbitant prices for rides, in what has grown into an informal taxi service in which Sioux prey on Sioux. But if there is no nearby relative with a car, there may not be a choice.

Transportation can mean life or death in this sparsely populated country, especially when combined with the paucity of telephones. Two premature infants died this summer on the way to faraway hospitals because the needed facilities were unavailable at the Indian Health service hospital here. The two-hour wait to get a plane from Rapid City was too long for their tiny bodies.

A 5-year-old girl slowly died from a chronic heart ailment on a Saturday night in July as her mother, who has no telephone or car, desperately tried to flag down cars on the highway. Two passed, but neither stopped. And the nearest neighbor, a quarter-mile away, did not come home until 4:30 a.m.

"Essentially the child was dead on arrival," said Joe Lucero, an official at the Indian Health Service hospital. "That's one example of how transportation caused the death of a 5-year-old child. . . . If we'd got to her at 2 or 2:30 a.m., she'd be alive."

Such transportation tragedies are unusual. But just getting around is a daily struggle. It is especially severe among people who are disabled and use wheelchairs. Neither the tribe nor various federal agencies provide special services for the disabled, including transportation. It is not unusual for quadriplegics and paraplegics to spend weeks or months in bed simply because there is noting else to do.

John Yellow Hair has been a paraplegic for almost two decades, and he is familiar with the struggle for mobility. For transportation, he relies on a wheelchair with bicycle tires and his mother's 1981 Monte Carlo with an engine from another car that was wrecked when it hit a horse.

He cannot drive, so he is dependent on his mother and the family car for the occasional 23-mile trip from his home to a hospital here. Driving the family car is almost an act of faith.

"Our car?" huffed Rebecca Yellow Hair. "It's falling apart, the roads are so bad."

Yellow Hair is part of a self-help group called the Quad Squad, which was formed to help quadriplegics and paraplegics deal with their depression and the lack of services on the reservation, where there are no nursing homes, no independent living facilities, no physical therapy.

The Quad Squad potentially could recruit a lot of members. An unusually large number of quadriplegics and paraplegics live on the reservation, most disabled for reasons that grow out of wine bottles and beer cans.

The problem has defied solution. "Traditional approaches like Alcoholics Anonymous don't work here," Lucero said. With few telephones, long distances between homes and little transportation, it is hard for a recovering alcoholic to find support during bouts of temptation.

Lucero estimated that half the admissions to the hospital are alcohol-related, many from traffic accidents.

Yellow Hair said his accident, which happened in Arlington, Va., was not alcohol-related. But he has plenty of friends who awoke paralyzed in hospital beds after a Saturday night of drinking.

Marlin Weston, a quadriplegic who once rode on the rodeo circuit, remembers slipping into a drunken stupor in 1985 on the passenger side of a friend's car and awakening in a Denver hospital seven days later, unable to more. His friend, the driver, suffered a broken collarbone.

Weston's 18-year-old sister, Colleen was killed by a drunk driver on the reservation in 1987. And nine months later, his 7-year-old nephew, B.J., was killed by a drunk driver while riding his bicycle at Wounded Knee.

Weston is to graduate this year from Oglala Lakota College to become a drug and alcohol counselor. "I don't want other young kids to go through what my family went through," he said.

Unlike some reservations where political stability has allowed progress and even prosperity, the Oglala Sioux regularly change governments every two years. As a result, it is difficult to sustain community programs and easy to overlook the disabled. "The most vulnerable people are largely forgotten," said Jim West, a social worker with the South Dakota Adult Services and Aging agency.

In 1989, frustrated by the lack of action, West and Weston decided that if government would not help, the people would have to help themselves, and the Quad Squad was born.

The Quad Squad has evolved into an amateur lobbying group, with a primary emphasis on transportation and mobility. "We wanted to influence positive change without blaming," West said. "And we wanted to emphasize individual responsibility and the power of community."

Weston is president and Yellow Hair is vice president; between them and their friends, they have made some people uncomfortable in the tribal government and in trips to the state capital at Pierre.

Take the case of Yellow Hair's wheelchair ramp. The tribe promised him a ramp repeatedly over the years, a promise that was never fulfilled. In a way, his only advance during the 1970s and 1980s was to find inflated bicycle tires for his wheelchair, to avoid jarring his body while riding over rocky roads around his home

In 1990, he appeared at a disabled advocacy meeting in Pierre, telling his story, with his friend Lyle Bald Eagle translating for him, since his traffic accident left him unable to form full sentences.

The state Office of Vocational Rehabilitation immediately offered to build a ramp, not knowing that the tribe had succumbed to

Quad Squad lobbying and had already built one. In fact, a lot of ramps have begun appearing all over the reservation.

The community still needed a van to transport the disabled. On the reservation, there was no wheelchair-lift van, and apparently no hope of getting one from the tribal government.

That is where luck and religion came in. Traveling during a vacation in Colorado, West spotted a rarity: a used wheelchair van sitting on the side of the road with a for-sale sign.

West remembered that a Nebraska Methodist Church group had been particularly moved by what it saw in a tour of the reservation, and he contacted the Methodist district superintendent at Scottsbluff, Neb., who contacted the Methodist missionary group for northwest Nebraska, which came up with $3,000 for the van.

The tribe agreed to include the van in its insurance policy and buy the license. "That leaves us with gas money, like the rest of the folks," West said. By patching together money from federal programs, he said, he hopes to have the van on the road soon.

These are small victories, considering the need. For example, a system for non-emergency medical transportation does not exist, even though a number of residents with alcohol-induced kidney disease must come to Pine Ridge as often as three times a week for dialysis.

Paul Iron Cloud, Weston's cousin and an official with the housing authority, acknowledges that the Quad Squad has raised the consciousness of the tribe to the needs of the disabled. It was not so much that tribal leaders refused to help the disabled as it was that the disabled did not demand help before now, he said. "A lot of people in a handicapped position just didn't care anymore," he said.

The Quad Squad gave the disabled a way to fight for their mobility, and it has paid dividends. Among other things, Yellow Hair finds it a little easier to move around since the housing authority widened the doors between his bedroom and bathroom and began installing handicapped-accessible facilities.

DEPARTMENT OF SOCIAL SERVICES,
OFFICE OF THE SECRETARY,
Pierre, SD April 7, 1992.

Mr. JAMES FOWLER,
General Accounting Office, Washington, DC.

DEAR MR. FOWLER: This letter is offered for your consideration when preparing General Accounting Office's (GAO) report back to Congress regarding two Indian reservation provisions mandated in the Mickey Leland Domestic Hunger Relief Act. Reservation provisions of great concern to the South Dakota Department of Social Services and to many of our reservation recipients include a thirty day staggered issuance rule and the prohibition of monthly reporting retrospective budgeting on Indian reservations.

South Dakota has nine Indian Reservations. The Oglala Sioux Reservation was included in the initial GAO report on food assistance programs on Indian Reservations.

Staggered Issuance—Section 1728 of Public Law 101–624 requires staggered issuance throughout the entire month on Indian reservations. Please reference the attached letter to FNS from Secretary James W. Ellenbecker regarding proposed rules published May 20, 1991, which reflects reservation recipients fears about staggered issuance. Their concerns were gathered in a South Dakota survey conducted in June, 1991 in which forty-four percent of active food stamp reservation households responded (see attachment one). Survey results voice the same transportation difficulties described in your report. A thirty day staggered issuance will spread issuances over the entire month and make car-pooling impossible. Currently, common practice on South Dakota reservations is for those with vehicles to charge $20 to $50 for a ride to purchase groceries when the transporter must make a special trip. Staggered issuances will greatly increase these "special trips" and cause great financial hardship for approximately half of the reservation food stamp families without transportation.

Staggered issuance was also mandated due to general comments to the GAO that grocery prices are higher during regular issuance schedules. GAO did not prove whether these statements were in fact valid. FNS staff from the Bismarck, North Dakota, office did visit several grocery stores to determine if grocery prices fluctuate according to food stamp issuance dates. Three reservations stores and six near-reservations stores were visited (see attachment two). Four of the six small towns visited are located in three different counties which border the North Dakota reservation selected for the GAO report. Two visits were made to the stores; one on issuance day (September 25, 1990) and the second between two issuance periods (December 11, 1990). Grocery prices reflected a decline in milk prices and showed slight variations according to normal factors such as grocery volume purchased and transportation expenses. Prices did not vary due to food stamp issuance cycles.

The South Dakota FNS office, located in Pierre, surveyed seventeen various items at ten authorized retailers on the Pine Ridge Oglala Sioux Reservation. The visits were made on September 17–18, 1990 (between issuance cycles), and again on December 11–12, 1990 (regular issuance pay date). Both surveys included the same stores and products. It was found that there was no appreciable difference in the pricing of the selected items for the end of the issuance period to the beginning of the issuance period (see attachment three).

Therefore, thirty day staggered issuance is not a necessary nor a beneficial change for reservation recipients but conversely would be an impairment to those households.

Monthly Reporting Retrospective Budgetary—Mandatory exemption of additional households from monthly reporting requirements is a barrier to effective state administration. The option currently exists for states to exempt additional households should they so choose. Monthly reporting is client responsive as it allows for twelve monthly certifications periods which is responsive to transportation difficulties found on reservations. Without monthly reporting, South Dakota would assign much shorter certifications periods as reservation households frequently change income and the Native American extended family culture results in fluid household composition.

Other reasons to preserve the portion of monthly reporting on reservations includes the following:

(1) Joint AFDC-Food Stamp households will still monthly report for AFDC which will cause client and agency confusion. The same household would be prospectively budgeted for food stamps but retrospectively budgeted for AFDC. Mandatory exemption of reservation households from monthly reporting provides further inconsistencies between AFDC and Food Stamps.

(2) Monthly reporting provides for changes to be reported just once a month. Eliminating this monthly change report structure would cause household to report changes as they occur, which in our opinion, would increase a reservation household's reporting responsibilities as food stamp case circumstances frequently change throughout the month.

(3) Many reservation households do not have telephones nor access to them which will make it difficult to report necessary changes.

(4) The GAO report does not hint at elimination of monthly reporting on reservations but instead remarks that states who do not reinstate benefits after an incomplete or late monthly report is filed should be required to do so. We agree with that recommendation.

(5) Agency workloads will increase as reservation households will be assigned shorter certification periods because caseworkers must check on circumstances without the benefit of monthly reports.

(6) Prospecting fluctuating income levels and household composition will be difficult. However, Indian lease income and other stable income sources can be anticipated based on historical data. In the future, Congress should move to exempt all Indian lease income from food stamp consideration.

I appreciate the opportunity comment on these provisions.

Sincerely,

JULIE OSNES,
Program Administrator,
South Dakota Food Stamp Program.

ATTACHMENT 1

DEPARTMENT OF SOCIAL SERVICES,
OFFICE OF THE SECRETARY,
Pierre, SD, June 19, 1991.

MARILYN P. CARPENTER,
Chief, State Administration Branch, Program Accountability Division, Food Stamp Program, Food and Nutrition Service, USDA, Alexandria, VA.

DEAR MS. CARPENTER: South Dakota Department of Social Services submits the following comments on the proposed Benefit Delivery Rule published Monday, May 20, 1991:

(1) Staggered Issuance—Section 1728 of Public Law 101–624 requires staggered issuance throughout the entire month on Indian reservations. South Dakota wishes to make the following comments:

(A) Survey—In June, 1991, the Office of Food Stamps surveyed 2808 active reservation Food Stamp households seeking public comment on the staggered issuance rule. Over 44 percent of reservation households responded in time for their comments to be reflected in this letter. Of reservation households responding to the survey, 47.90% stated that staggered issuance would be a hardship for them. Specific comments included:

"Food sales occur during the normal issuance week at local grocery stores so some would miss sale items as sale is only one week of the month."

"My daughters, who also receive Food Stamps, pick up my stamps for me so we need the same issuance time."

"We really need our stamps when we get them now because we don't have much money."

"It surely would be a problem for me as my monthly income is $195 and with this, I support myself and two children * * * so I need my stamps early in the month."

"I would probably run out of food by the time my turn came up so I might as well drop Food Stamps and get commodities."

"The money from our check doesn't last so I depend on Food Stamps coming in on time."

"I might not have gas money to get groceries by the time my stamps would come."

"We pick up for our neighbors so we would have to make two trips."

"Food items would never go on sale if Food Stamps were issued throughout the month."

"My authorized representative would probably be on a different list (schedule)."

"Our rides have different last names."

"My rides wouldn't be available then."

"It is very easy to get a ride when we get them the same day."

(B) Intent of mandatory staggered issuance was apparently seen as a way to solve a "perceived", but unfounded, unfairness on Indian reservations. However, our documentation reveals that clients who could previously "car pool" or obtain rides to a grocery store would lose their transportation opportunity. Any benefit envisioned by this law change is outweighed the minute reservation families begin paying $20 to $50 for a ride to purchase groceries because their previous coordinated travel arrangement no longer works due to staggered issuance schedules.

(C) Forty Day Limit—Because South Dakota is a monthly reporting state, we are concerned that households who file a late monthly report form could conceivably wait 50 days between issuances.

(D) Definition of month—Section 271.2 defines "issuance month" for MRRB systems as well as for prospective budgeting systems. Issuance months can either be fiscal or calendar months. The definition of issuance month has been defined by the Secretary and could be subject to change to ensure effective and efficient administration of the Food Stamp Program. We wish to suggest that regulations not bind this law change to the current issuance month definition of a calendar or fiscal month but instead be written to allow maximum state flexibility. The law does not specify calendar or fiscal month or even refer to "issuance month" terminology. Therefore, leave the interpretation of "throughout the month" to the State Agency. South Dakota would then be allowed flexibility to work within computer system restraints as well as afford maximum consideration of reservation recipients' circumstances.

(E) Automated System Issues—South Dakota's certified, integrated automated eligibility and issuance system, ACCESS, would require massive changes to accommodate staggered issuances over an entire month should the final rule restrict us to the current issuance month definition. Preliminary cost estimates are anticipated at $500,000 and changes would impact AFDC and medical programs as well. A timetable for the ACCESS rewrite is estimated to involve a year's worth of staff time, and would prevent any other changes from being made during the rewrite for all programs served by ACCESS.

(2) Mail Issuance in Rural Areas—It appears South Dakota meets the mail issuance requirement for rural areas since our recipients have always been afforded the right to choose between mail issuance or over the counter pick-up via an ATP system. Recent reports indicate approximately 55% of South Dakota recipients select mail issuance while the other 45% prefer the ATP system. The proposed rule, as written, does not reference client option and appears to remove a benefit recipients in this state have always enjoyed. We encourage mail issuance and support the usefulness of such a rule in states where recipients were not previously afforded the right to mail issuance.

Households selecting over the counter pick-up have legitimate reasons for their issuance choice. Those reasons include convenience due to living near the issuance office (same town), concerns with unlocked mailboxes shared by multiple families, and only three day a week mail delivery service in some areas.

We advocate that South Dakota's client choice issuance system be deemed to meet the intent of this amendment.

(3) Combined Allotments—South Dakota implemented the combined allotment rule previously and will continue under the optional rule. In our experience, combined allotments for initial month applicant households provide maximum food purchasing power for qualifying families with minimal administrative burden.

We appreciate the opportunity to comment on this proposed rule package and are hopeful that the definition of "month" in the final rule package will be left up to State Agencies' expertise. In addition, be assured South Dakota will continue to pursue a legislative change to the staggered issuance reservation rule.

Sincerely,

JAMES W. ELLENBECKER,
Secretary, Chairperson,
APWA Food Stamp Subcommittee.

ATTACHMENT 2

U.S. DEPARTMENT OF AGRICULTURE,
FOOD AND NUTRITION SERVICE,
Bismarck, ND, March 4, 1992.

Subject: Food Cost Comparison.

To: Ms. Julie Osness, Director, South Dakota Food Stamp Program, Department of Social Services, Pierre, SD.

Here is subject matter requested to be sent to you by Rafael Zambrano, Food Stamp Program, Federal Operations Section, Mountain Plains Regional Office, Denver, Colorado.

SHARRON LASHER,
Officer-in-Charge,
Bismarck, North Dakota Field Office.

The information was gathered by visiting nine (9) grocery stores. Three (3) of the stores were located on the Reservation and six (6) were off the Reservation, but are in the immediate service area.

Four (4) of the six (6) small towns visited are located in three different counties which border the Reservation. All of the stores are small rural grocery businesses. However, five (5) of the stores are located in prime recreational (boating, fishing and hunting) areas. The stores identified as #3, #5, #6 on the chart are located on the Reservation.

This office made two (2) visits to the area stores. The first visit was on September 25, 1990, issuance day for food stamp households. The next visit was made on December 11, 1990, which is between two issuance periods (dates).

In addition to the normal factors (volume purchased, product transportation) related to pricing, there is a need to consider the recreational seasons and the fact that on December 3, 1990, milk products began declining in price.

In you have any questions, please do not hesitate to call.

BRUCE BELL,
Food Program Specialist,
Bismarck, North Dakota Field Office.

ATTACHMENT 3

To: Greg Evans,
Pierre, SD.

December 14, 1990.

Subject: Retailer Price Survey—South Dakota.

Prices of 17 various items were surveyed at 10 authorized retailers on the Pine Ridge Indian Reservation of South Dakota on 9/27–28/90 and again on 12/11–12/90. Both surveys included the same stores and products. The first survey was conducted just prior to Food Stamp issuance and the second survey was conducted during the first 3 days of the December Food Stamp issuance. It was found that there was no appreciable difference in the pricing of the selected items from the end of the issuance period to the beginning of the issuance period. Records of the specific stores and the pricing of the selected items are available in the Pierre Field Office.

SARA HOSTBJOR,
Pierre, SD, Field Office.

U.S. GENERAL ACCOUNTING OFFICE,
RESOURCES, COMMUNITY, AND ECONOMIC DEVELOPMENT DIVISION,
November 25, 1992.

Hon. PATRICK J. LEAHY, *Chairman*
Hon. RICHARD G. LUGAR, *Ranking Minority Member,*
Committee on Agriculture, Nutrition, and Forestry, U.S. Senate.
Hon. E. (KIKA) DE LA GARZA, *Chairman,*
Hon. E. THOMAS COLEMAN, *Ranking Minority Member,*
Committee on Agriculture, House of Representatives.

In response to Public Law 102–237 (sec. 908) and subsequent meetings with your offices, this correspondence provides information on two provisions of the Food, Agriculture, Conservation, and Trade Act of 1990 (P.L. 101–624), Title XVII, (the "Mickey Leland Memorial Domestic Hunger Relief Act"), regarding the administration of the Food Stamp Program on Indian reservations.

The first provision of the 1990 act (sec. 1723) exempts reservation households from the Food Stamp Program's monthly income reporting requirement. State agencies certify households to participate in the program continuously for up to a year, during which time they are eligible to receive food stamps. State agencies use monthly reports from households to update their eligibility status and to ensure that benefit issuances are correct. The exemption for reservation households was intended to overcome perceived problems encountered by these households in complying with the program's monthly income reporting requirement.

The second provision of the 1990 act (sec. 1728) requires state agencies to stagger the issuance of food stamp benefits throughout the month for recipients residing on Indian reservations. State agencies issue food stamps to eligible households, including those located on Indian reservations, on or about the same day each month. Some reservation households have claimed that food stores appear to raise their prices at the time when food stamps are issued. This provision was intended to discourage food stores from increasing their prices to coincide with food stamp issuances.

Under Public Law 102–237, the Congress temporarily suspended the implementation of the two provisions and required us to provide information on the difficulties that reservation households experience in obtaining and using food stamps. We agreed with your Committee to summarize the views of 13 state agencies that provided written comments to congressional offices, the U.S. Department of Agriculture (USDA), and our office, regarding the provisions' potentially disruptive impacts on program administration and on recipient reservation households. About half of the Indian reservations nationwide are located in these 13 states whose

comments we agreed to summarize. In addition to the state agencies' comments, we also solicited comments from four nationally prominent Indian organizations regarding the anticipated impacts of the two provisions. We received responses from two of the four Indian organizations. The remaining two organizations did not provide comments on either of the two provisions.

MONTHLY REPORTING EXEMPTION FOR RESERVATION HOUSEHOLD IS OPPOSED

State agencies and Indian organizations that provided comments on this provision oppose the exemption of reservation households from the Food Stamp Program's monthly income reporting requirement. A majority of state agencies commented that the exemption would increase the potential for food stamp benefit errors. Benefit errors are used as a basis to determine what, if any, penalties should be imposed on state agencies for inaccurate benefit issuances. Eleven of the 13 state agencies commented on the monthly reporting exemption. Four of these 11 state agencies were potentially liable for penalties in fiscal year 1991. The state agencies also commented that monthly reporting standards should apply consistently throughout the program.

The two Indian organizations commented that the elimination of monthly reporting might cause some state agencies to require that reservation households be recertified for food stamp benefits more than once a year to account for frequent changes in their income and household circumstances. To obtain benefits, program participants would have to complete a new application and appear for an interview with a caseworker. In this regard, some state agencies did, in fact, comment that they would shorten the program's certification period if the monthly reporting requirement is eliminated.

Enclosure I contains more detailed information on the comments provided by the state agencies and Indian organizations on this provision.

STAGGERED ISSUANCE OF FOOD STAMPS IS OPPOSED

State agencies and Indian organizations that provided comments on this provision oppose staggering the issuance of food stamps to households on Indian reservations. State agencies commented that the provision would require them to modify their existing administrative procedures and systems to stagger the issuance of food stamps throughout the month. According to the agencies, these modifications would increase the time and cost required to administer the program. None of the state agencies provided estimates of the increased costs that they would incur to implement this provision. Since the federal government shares the costs of administering the program with the state agencies, any increase in allowable administrative costs would require additional federal funding. We estimated that if the staggered issuance provision had been in effect during fiscal year 1991 and had raised the federal administrative costs in those states with Indian reservations by 1 percent, 5 percent, or 10 percent, then approximately $5 million, $26 million, or $53 million, respectively, in additional federal funds would have been needed to administer the program.

The state agencies also noted that the provision could increase transportation difficulties for reservation households that rely on car pooling to obtain and use their food stamps. The Indian organization agreed that staggering the issuance of food stamps could create additional transportation problems for reservation households, unless recipients were permitted to choose their food stamp issuance date of facilitate carpooling.

Also, the state agencies and Indian organizations differ on whether retailers are increasing their food prices when food stamps are issued—the problem that the provision was intended to address. About half of the state agencies commenting on the staggered issuance provision said that there are no indications that food retailers on or near reservations are raising their food prices to coincide with the issuance of food stamps. However, according to one Indian organization, some retailers may be increasing their prices by removing sale signs when food stamps are issued.

We issued two reports—one in 1989 and one in 1990[1]—that contained information on various obstacles affecting food stamp recipient households on four Indian reservations. Our June 1990 report included a recommendation to the Secretary of Agriculture to explore with state officials in North Dakota and South Dakota whether state agency food stamp issuance practices resulted in increased food prices and to take corrective action, as appropriate. In response, USDA's Food and Nutrition Service (FNS) conducted surveys of grocery stores authorized to accept food stamps in two reservation areas in both states. In January 1991 FNS concluded that there was no appreciable difference in the pricing of selected food items in either of the two reservation areas surveyed.

Enclosure II contains more detailed information on the comments provided by the state agencies and Indian organizations on this provision.

We conducted our work from May to November 1992 in accordance with generally accepted government auditing standards. As noted previously, we reviewed comments and information provided to congressional offices, USDA, and our office by 13 agencies that administer the Food Stamp Program in their respective states. These states contain about 158, or about 47 percent, of the approximately 337 Indian reservations located in a total of 29 states. Eleven state agencies commented on the monthly reporting exemption, and all 13 state agencies commented on the provision to stagger the issuance of food stamps.

We also requested comments on both provisions from four nationally prominent Indian organizations concerning the impact of the provisions on reservation households. We selected these organizations on the basis of our previous work on Indian issues and the recommendations of representatives from several Indian organizations. We received comments from two of the four Indian organizations. The comments provided by the state agencies and Indian organizations contained information on their overall concerns regarding the implementation of the two provisions and offered some examples of specific difficulties that would be encountered by the agencies and recipient households. The comments from the state agencies and Indian organizations contained limited quantitative support for their stated positions. We also gathered information on the Food Stamp Program and met with FNS officials to obtain their views of these issues.

Enclosure III lists the 13 state agencies that provided comments and the four Indian organizations from which we requested comments on the two provisions.

If you have any questions, please contact me at (202) 275-5138.

Sincerely yours,

JOHN W. HARMAN,
Director, Food and Agriculture Issues.

ENCLOSURE I

COMMENTS ON MONTHLY REPORTING EXEMPTION PROVISION

This enclosure contains information on the Food Stamp Program's monthly reporting requirement and a summary of the comments provided by 11 state agencies and 2 Indian organizations on the provision to exempt reservation households from the requirement.

MONTHLY REPORTING REQUIREMENT

To obtain food stamps, individuals must complete and file an application with a state agency indicating that they are seeking Food Stamp Program benefits. A face-to-face certification interview must also be completed, during which a caseworker obtains detailed information on the applicant household's income, assets, and expenses. If eligible, the household is certified to receive food stamps for a continuous period of up to 12 months.

During the certification period, households are required to report changes in income and to verify information that may affect the amount of their benefits. Most state agencies require monthly reporting by all participating households or selected groups of participating households. Households are permitted to submit the monthly reports by mail or deliver the reports in person to local food stamp offices. These monthly reporting procedures were established to reflect changes in the circumstances of recipient households in a timely manner and to ensure the adequacy of benefits. As a quality control measure, state agencies review samples of their active food stamp cases and determine whether the amounts of past benefits issued were correct. The federal government levies financial penalties against state agencies for excessive erroneous benefit issuances. The amount of the penalty varies with the extent to which a state agency's issuance errors exceed a predetermined threshold. Enclosure IV shows the error rates for the 11 state agencies that commented on the monthly reporting exemption.

Certain households have been legislatively exempted from the monthly reporting requirement, including (1) migrant farm workers, (2) the homeless, and (3) the elderly or disabled with no earned income. Section 1723 of Public Law 101-624 adds Indian reservation households to the list of households exempted from the monthly reporting requirement. This provision is intended to eliminate reservation households' difficulties in completing and submitting monthly reports. However, in response to concerns expressed by state agencies regarding the potentially disruptive impact of the exemption of their administration of the program as well as on reservation households, the Congress included a provision in Public Law 102-237 that suspended implementation of the exemption until April 1, 1993.

STATE AGENCY COMMENTS

The 11 state agencies that commented on the monthly reporting exemption cited the following three key issues.

Monthly reporting exemption will increase potential for benefit errors

Seven state agencies commented that the monthly reporting exemption for reservation

[1] *Food Assistance Programs: Nutritional Adequacy of Primary Food Programs on Four Indian Reservations,* (GAO/RCED-89-177, Sept. 29, 1989) and *Food Assistance Programs: Recipient and Expert Views on Food Assistance at Four Indian Reservations,* (GAO/RCED-90-152, June 18, 1990).

households will increase the potential for food stamp benefit errors. For example, the Montana Department of Social and Rehabilitation Services commented that because extended families are common among Indian households, frequent changes occur in household composition and income. The Montana agency stated that without monthly reporting, recipients would have to report changes as they occur rather than once a month. According to the agency, this process would likely increase the probability of over- and underissuances of food stamp benefits. Several other state agencies also expressed concerns that implementing the monthly reporting exemption would lead to increases in benefit errors. For example, the South Dakota Department of Social Services stated that errors in benefits would increase for most reservation families if the families were exempted from monthly reporting.

GAO Comment: U.S. Department of Agriculture's Food and Nutrition Service officials told us that state agencies are concerned about the possible increase in error rates resulting from the elimination of the monthly reporting requirement. They explained that higher error rates may result if recipient households do not report changes in income and other household circumstances with the same reliability as they would under monthly reporting.

As enclosure IV shows, three of the seven state agencies that cited the potential for increased error rates exceeded the national average error rate for fiscal year 1991, and two of these state agencies may be liable for penalties.

Monthly reporting requirement should be consistent throughout the Food Stamp Program

Seven state agencies commented that monthly reporting standards should be applied consistently throughout the entire Food Stamp Program. For example, the Wyoming State Department of Family Services stated that monthly reporting requirements are currently the same for all food stamp recipients throughout the state. However, if these requirements are changed for reservation households, the Wyoming agency recommends that the same changes be made for all Food Stamp Program households. According to the state agency, exceptions to monthly reporting requirements would create confusion for recipients and caseworkers. For example, the agency noted that in the counties where an Indian reservation is located, about 85 percent of all recipients of Aid to Families with Dependent Children (AFDC) also receive food stamps. Because AFDC requires monthly reporting by recipient households, the majority of AFDC households that also receive food stamps would still be required to report monthly, even though the households would be exempt from monthly reporting under the Food Stamp Program, according to the Wyoming agency.

Certification periods may be shortened

Four state agencies commented that monthly reporting is advantageous for food stamp recipients because it allows yearlong program certification periods. In addition, three of these agencies stated that if reservation households are exempt from the monthly reporting requirement, shorter certification periods would be needed to account for frequent changes in household income and composition. For example, the South Dakota agency commented that if monthly reporting is eliminated, it intends to shorten the certification period to reflect the frequent changes in reservation household circumstances. This change would require recipients to have face-to-face visits with their local caseworker more than once a year to be recertified for the program.

Two other state agencies also commented that the exemption from monthly reporting would require more frequent recertification of reservation households. For example, the Montana agency stated that these yearlong certification periods, in conjunction with monthly reports, were more responsive to the "severe transportation difficulties" commonly experienced by reservation households. The Washington Department of Social and Health Services provided similar comments, noting that the lack of monthly reports would necessitate shorter certification periods to keep track of recipients' circumstances and would therefore require more frequent interviews with recipients. The shorter certification periods would also increase work loads for Washington's community services offices, according to the agency.

INDIAN ORGANIZATION COMMENTS

The National Congress of American Indians (NCAI) and Americans for Indian Opportunity (AIO) provided comments on the monthly reporting exemption for reservation households. Both organizations commented that eliminating monthly reporting might cause some state agencies to require reservation households to be recertified for food stamps more often than once a year to account for frequent changes in their income and family circumstances. Requiring more frequent recertification would increase the burden on households applying for and receiving food stamps, according to these organizations.

NCAI commented that the composition of Indian households may change frequently because of extended family relationships and that many households have unstable monthly incomes. These changes must be reported to local food stamp authorities. However, reservation households often have transportation difficulties or limited access to telephones. The organization commented that without monthly reporting recipients would be required to report changes in income and household composition as they occurred—rather than only one time each month.

ENCLOSURE II

COMMENTS ON THE STAGGERED ISSUANCE PROVISION

This enclosure contains information on the Food Stamp Program's benefit issuance procedures and a summary of the comments provided by 13 state agencies and 2 Indian organizations on the provision to stagger the issuance of food stamps throughout the month on Indian reservations.

FOOD STAMP BENEFIT ISSUANCE PROCEDURES

Each state agency is responsible for the timely and accurate issuance of Food Stamp Program benefits to certified eligible households. Certified households are placed on an issuance schedule so that they receive their benefits on or about the same date each month. Depending on the state agency involved, households receive their benefits through a number of issuance systems, including direct mail, authorization to participate cards, electronic benefit transfer cards, and manual delivery of benefits at local food stamp offices.

Currently, the only program requirement concerning staggered issuance applies to direct mailings of food stamps. State agencies that issue benefits by direct mail must stagger the mailings of food stamp benefits over at least 10 days of the month. In addition, state agencies have the option to stagger the issuance of benefits to households throughout the entire month.

Section 1728 of Public Law 101-624 requires state agencies to stagger the issuance of benefits throughout the month to all eligible households on Indian reservations, regardless of the issuance system used to deliver benefits. This provision is intended to discourage retail stores from increasing their food prices on the day that food stamps are issued, thereby improving the delivery of benefits to reservation households. However, in response to concerns expressed by state agencies regarding the potentially disruptive impact of this section, the Congress included a provision in Public Law 102-237 that temporarily suspended its implementation until April 1, 1993.

STATE AGENCY COMMENTS

The 13 state agencies that commented on the staggered issuance provision cited the following three key issues.

Staggered Issuance Will Increase State Agency Administrative Burdens

Comments from 10 state agencies indicated that administrative problems could occur if the staggered issuance provision was implemented. For example, the Washington Department of Social and Health Services commented that reservation boundaries are not well known to either recipients or eligibility workers, making identification of affected households difficult. The Washington agency also noted that Indian recipients represent only 4.3 percent of Washington's food stamp caseload and that many Indians do not live on reservations. As a result, the agency is concerned that it will be required to establish a separate and expensive issuance system to implement the provision for a very small portion of the state agency's caseload.

The Idaho Department of Health and Welfare also commented that, although its data system collects ethnic information from food stamp recipients, the agency has no means to identify Indian recipients who live on reservations. According to the Idaho agency, not all Indian recipients live on reservations and not all residents of reservations are Indians. In addition, the agency noted that it cannot use U.S. mail zip codes to identify Indian reservation residents, since reservations are located in rural areas where zip codes include much larger geographical areas than reservation boundaries. The Idaho agency added that some reservations are intersected by multiple zip codes, each encompassing nonreservation areas.

Several state agencies cited other administrative problems that might accompany staggered issuance on reservations. For example, the Iowa Department of Human Services commented that it uses the direct mail issuance system to deliver food stamp benefits throughout the state. Using this system, the agency staggers the issuance of food stamps through the first 10 business days of each calendar month. However, if required to stagger food stamp issuance throughout the month on Indian reservations, the agency would have to make "significant" changes to its existing issuance system. In addition, the agency noted that Iowa has only 47 food stamp reservation households, which represent about 0.06 percent of the total number of food stamp households in the state. According to the Iowa agency, the amount of time and money needed to make the necessary changes would be "astronomical considering the percentage of the population affected."

GAO Comment: Seven state agencies commented that costly modifications to their

food stamp issuance systems would be needed to implement this provision. However, no agency estimated the possible increase in costs. The costs of administering food stamps is shared between the federal government and the state agencies. According to the U.S. Department of Agriculture's Food and Nutrition Service's (FNS) Food Stamp Program State Activity Report for fiscal year 1991, the federal share of administering the Food Stamp Program in the 29 states that contain Indian reservations was about $525 million. We estimated that if the staggered issuance provision had been in effect during fiscal year 1991 and had raised the federal share of allowable administrative costs by 1 percent, 5 percent, or 10 percent, then approximately $5 million, $26 million, or $53 million, respectively, in additional federal funds would have been needed to administer the program. Enclosure V lists the federal costs of administering food stamps in those states containing Indian reservations.

Staggered Issuance Could Increase Participation Barriers for Reservation Households

According to 10 state agencies, the staggered issuance provision could make it more difficult for reservation households to participate in the Food Stamp Program. In particular, increased transportation difficulties were cited by nine state agencies as a potential participation barrier. For example, the Montana State Department of Social and Rehabilitation Services commented that carpooling is a common means of transportation, since many reservation households do not own a vehicle and access to public transportation is limited on reservations. When food stamps are issued once a month, reservation households can share rides to purchase groceries at distant off-reservation retailers. However, if the issuance of food stamps is staggered throughout the month, carpooling would not be feasible for food stamp recipients who share rides over long distances to shop at off-reservation food stores, according to the Montana agency.

The South Dakota Department of Social Services agreed that the staggered issuance provision would make carpooling impractical for many reservation households. The South Dakota agency added that the provision would create great financial hardship for many reservation households, especially those who cannot carpool, since vehicle owners often charge reservation residents $20 to $50 for transportation to shopping areas. The agency also provided the results of a survey that the agency conducted in June 1991 which included 2,808 reservation households receiving food stamps in South Dakota. This survey sought public comment concerning the provision to stagger the issuance of food stamps on Indian reservations. According to the South Dakota agency, over 44 percent of the households responded to the survey, and, of these households, about 48 percent stated that the staggered issuance provision "would be a hardship for them."

State Agencies Report Few Price Increases Associated With Issuance of Food Stamps

Eight state agencies commented that there were no indications that food retailers on or near Indian reservations were raising their food prices to coincide with the issuance of food stamps. For example, the South Dakota agency stated that food price surveys conducted by FNS in North Dakota and South Dakota showed that food prices did not vary with food stamp issuance cycles in reservation areas. For this reason, state agencies view the provision to stagger the issuance of food stamps on reservations as unnecessary, administratively burdensome, and, in most cases, detrimental to reservation households.

Although state agencies did not regard increases in food prices associated with the issuance of food stamps as a widespread problem, they did propose a number of possible ways to address potential price-increasing by retailers. For example, Nebraska's Department of Social Services suggested that rather than burdening recipients and state agencies with mandated staggered issuance, state agencies should impose penalties on retailers that increased prices. Arizona and South Dakota state agencies recommended that retailers be monitored for potential food price increases associated with food stamp issuance. In particular, the South Dakota agency recommended that appropriate penalties should be applied in cases of unfair grocery pricing during food stamp issuance cycles on reservations.

GAO Comment: FNS officials told us that, although they are concerned about equal treatment for food stamp coupon customers, food stamp regulations do not provide FNS with the authority to specify the prices at which retailers may sell food. FNS can impose a penalty on retailers who raise their food prices if the increase is directed at food stamp customers.

INDIAN ORGANIZATION COMMENTS

The National Congress of American Indians (NCAI) and Americans for Indian Opportunity (AIO) provided comments on the staggered issuance provision. Both Indian organizations cited the following two key issues in their comments.

Staggered Issuance Could Increase Transportation Difficulties for Reservation Households

According to both Indian organizations, staggering the issuance of food stamps throughout the month would make it more difficult for recipients who must rely on limited resources to carpool to off-reservation grocery stores. For example, NCAI commented that it was concerned about the additional transportation problems that the provision would cause for Indian recipients residing on remote areas of reservations and suggested that recipients should be allowed to choose the time of the month when food stamps are issued if this provision is implemented.

AIO agreed that reservation recipients should be allowed to chose their date of benefit issuance, so that families can continue to carpool under the staggered issuance provision.

Indian Organizations Disagree With State Agencies on Existence of Price Increasing in Reservation Areas

Both Indian organizations agreed with the state agencies that appropriate penalties should be applied in cases of unfair grocery pricing during food stamp issuance cycles on reservations. However, NCAI does not agree with state agencies that maintain that no price-increasing problems exist. The organization pointed out that "price-gouging may be subtle, such as the disappearance of sale signs when food stamps are issued."

NCAI suggested that additional studies should be conducted if complaints of "price-gouging" were received in other states.

GAO Comment: In our 1990 report, we recommended that FNS and state agency officials in North Dakota and South Dakota explore whether food stamp issuance practices increased food prices on or near Indian reservations. In response, FNS surveyed grocery stores authorized to accept food stamps in two reservation areas in North Dakota and South Dakota. In January 1991 FNS concluded that there was no appreciable difference in the pricing of selected food items on the two reservations surveyed.

Both NCAI and AIO suggested that the current price-increasing penalties should be changed. The current penalty is the withdrawal of a retailer's authority to accept food stamps—a penalty that harms the recipient more than it harms the retailer, according to both Indian organizations. They noted that this penalty reduces the number of locations where reservation households can shop and requires households to travel greater distances to other stores authorized to accept food stamps. The organizations recommended that state agencies impose direct penalties, such as civil fines, upon retailers rather than revoke their food stamp authorization.

ENCLOSURE III

STATE AGENCIES AND INDIAN ORGANIZATIONS

STATE AGENCIES

Arizona Department of Economic Security.
California Department of Social Services.
Florida Department of Health and Rehabilitative Services.
Idaho Department of Health and Welfare.
Iowa Department of Human Services.
Kansas Department of Social and Rehabilitation Services.
Montana Department of Social and Rehabilitation Services.
Nebraska Department of Social Services.
South Dakota Department of Social Services.
Texas Department of Human Services.
Utah Department of Human Services.
Washington Department of Social and Health Services.
Wyoming Department of Family Services.

INDIAN ORGANIZATIONS

Americans for Indian Opportunity.
Association on American Indian Affairs (Did not respond).
National Congress of American Indians.
Native American Rights Fund (Did not respond).

FISCAL YEAR 1991 FOOD STAMP PROGRAM QUALITY CONTROL ERROR RATES

[In percent]

State agency	Under-issuance error rate	Over-issuance error rate	Combined error rate
Arizona Department of Economic Security*	3.0	8.23	11.23
Florida Department of Health and Rehabilitative Services	2.88	8.01	10.89
Idaho Department of Health and Welfare*	2.01	7.5	9.5
Iowa Department of Human Services*	1.73	5.77	8.5
Kansas Department of Social and Rehabilitation Services	1.24	6.15	7.4
Montana Department of Social and Rehabilitation Services*	1.54	5.31	6.85
South Dakota Department of Social Services*	0.48	3.52	4.0
Texas Department of Human Services	1.93	8.53	10.46
Utah Department of Human Services*	0.96	6.29	7.25
Washington Department of Social and Health Services*	1.71	9.51	11.22
Wyoming Department of Family Services	2.53	6.59	9.13

In June 1992, FNS published a summary of food stamp quality control error rates for fiscal year 1991. According to this summary, the national combined payment error rate for fiscal year 1991 is 9.31 percent, and the tolerance level above which state agencies are potentially liable for financial penalties is 10.31 percent. Listed above are the quality control error rates for the 11 state agencies that commented on the monthly reporting exemption. Four of the 11 state agencies exceeded the tolerance level of 10.31 percent and were potentially liable for penalties.

Seven state agencies, designated by an asterisk, specifically commented that error rates could increase if the monthly reporting exemption is implemented. Three of these seven state agencies were potentially liable for penalties.

FISCAL YEAR 1991 FEDERAL FOOD STAMP PROGRAM ADMINISTRATIVE COSTS FOR STATES CONTAINING INDIAN RESERVATIONS

State	Certification	Issuance	Combined
Arizona	$7,852,254	$419,590	$8,271,844
California	97,770,658	5,357,168	103,127,826
Colorado	3,863,062	2,169,025	6,032,087
Connecticut	5,935,780	410,529	6,346,309
Florida	29,618,972	4,047,310	33,666,282
Idaho	2,546,709	241,684	2,788,393
Iowa	5,701,104	627,665	6,328,769
Kansas	2,822,777	234,636	3,057,413
Louisiana	20,221,346	3,273,564	23,494,910
Massachusetts	8,798,472	1,385,442	10,183,914
Maine	3,371,495	289,044	3,660,539
Michigan	14,705,326	2,492,927	17,198,253
Minnesota	11,078,956	1,421,881	12,500,837
Mississippi	9,320,344	1,549,428	10,869,772
Montana	2,586,125	261,435	2,847,560
Nebraska	2,595,203	720,452	3,315,655
Nevada	2,931,075	112,563	3,043,638
New Mexico	6,718,672	606,133	7,324,805
New York	70,809,264	10,849,483	81,658,747
North Carolina	19,869,908	1,822,476	21,692,384
North Dakota	1,579,676	293,749	1,873,425
Oregon	3,807,273	1,019,462	4,826,735
South Dakota	1,678,256	404,937	2,083,193
Texas	75,545,803	9,390,965	84,936,768
Utah	5,638,466	458,270	6,096,736
Washington	18,901,844	1,826,723	20,728,567
Wisconsin	6,904,023	2,086,452	8,990,475
Wyoming	838,383	22,663	861,046
Total	468,641,408	56,833,175	525,474,583

By Mr. ROTH:

S. 285. A bill to amend the Internal Revenue Code of 1986 to require reporting of group health plan information on W–2 forms, and for other purposes; to the Committee on Finance.

MEDICARE SECONDARY PAYER REFORM ACT OF 1993

• Mr. ROTH. Mr. President, health care reform is one of the most urgent items on the new administration's domestic agenda, and one of the reforms most urgently demanded by American health care consumers. It is imperative that steps be taken to rein in spiraling health care costs, and ensure top-quality medical care at economical and affordable prices for all Americans.

As we consider how to address this situation, it is also imperative, Mr. President, that we look at the system which we now have, and attempt to preserve the good aspects of this and eliminate the bad. This approach will save needless retracing of steps and ensure that we proceed systematically and prudently.

Today, with the legislation I am introducing, I would like to address one small, yet significant component of this existing system: the Medicare secondary payer, or MSP program—one part of the Medicare system. This program involves primarily the working elderly—people who are over 65 but who are still employed and have private health insurance through their employer. MSP is designed, as its name implies, to ensure that if an individual has private insurance, this private insurance will pay the primary cost of medical bills, while Medicare will contribute only as a secondary payer.

MSP provisions have been in force for over a decade. Unfortunately, however, implementation of the program has been, at best, erratic. Various government sources estimate that losses to the Federal Government as a result of improper payments which do not conform to the MSP program range from $400 million to $1 billion per year. Several years ago, the Permanent Subcommittee on Investigation, on which I serve as ranking minority member, held hearings on the MSP Program. Our investigation revealed that a major reason for the losses in the MSP Program is inefficiency and inaccuracy in collection and dissemination of data on private insurance coverage. Payments are made by Medicare as primary payer in many circumstances where the individual in question is covered under an employer-sponsored group health plan which should be bearing the primary costs.

Today, I am introducing legislation aimed at eliminating improper payments under the MSP Program and thereby stemming the flow of wasted Federal tax dollars. This legislation has two components. The first is an amendment to the Federal W–2 tax form which would add one additional line asking employers to certify: First, whether or not they offer group health insurance to their employees; and second, what type of coverage—self or family—if any, the employee has elected. The second component, and the key to the success of this MSP reform legislation, is the establishment of a data bank for the collection and processing of this health insurance information. Without such a systematic process, the erroneous payments, waste, and abuse occurring under the MSP Program will continue. Medicare administrators as well as other appropriate State agencies would have access to the information as a check to ensure that the proper private insurance, if applicable, has paid primary to Medicare.

Costs of our medical care and health insurance systems are spiraling. Medical care providers such as hospitals, Medicare contractors which administer Medicare benefits, private insurance companies, the Health Care Financing Administration, and even the Congress—all bear some of the responsibility for this situation, and all must work together to rectify it. The United States has the most advanced medical research programs and health technology in the world. Yet, by gradually pricing ourselves out of our own market, we run the danger of losing the competitive edge which has enabled our doctors and nurses, our hospitals and clinics to be at the forefront in offering lifesaving cures and techniques.

I urge the support of my colleagues for this legislation.

Mr. President, I ask unanimous consent that the text of this bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 285

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Medicare Secondary Payer Reform Act of 1993".

SEC. 2. GROUP HEALTH PLAN INFORMATION REPORTING.

(a) IN GENERAL.—Subsection (a) of section 6051 of the Internal Revenue Code of 1986 (relating to receipts for employees) is amended—

(1) by striking "and" at the end of paragraph (8),

(2) by striking the period at the end of paragraph (9) and inserting ", and", and

(3) by inserting after paragraph (9) the following new paragraph:

"(10) whether a group health plan (as defined in section 6103(l)(12)(E)(ii) is available to the employee and the plan coverage (single or family) elected by such employee (if any).".

(b) DISCLOSURE OF INFORMATION.—Paragraph (12) of section 6103(l) of the Internal Revenue Code of 1986 (relating to disclosure of returns and return information for purposes other than tax administration) is amended—

(1) by striking "the Administrator of the Health Care Financing Administration, disclose to the Administrator" in subparagraph (B) and inserting "the applicable official, disclose to such official",

(2) by adding at the end of subparagraph (B) the following new clause:

"(iv) With respect to each such medicare beneficiary and spouse (if any), the group health plan information required under section 6051(a)(10).",

(3) by striking the matter preceding clause (i) of subparagraph (C) and inserting the following:

"(C) DISCLOSURE BY OFFICIAL.—With respect to the information disclosed under subparagraph (B), the applicable official may disclose—",

(4) by striking "as having received wages from the employer" in subparagraph (C)(i),

(5) by striking "such Administrator" each place it appears in subparagraph (C)(iii) and inserting "such official",

(6) by striking clause (iii) of subparagraph (E), and inserting the following new clause:

"(iii) APPLICABLE OFFICIAL.—The term 'applicable official' means—

"(I) the Administrator of the Health Care Financing Administration,

"(II) the Secretary of Defense,

"(III) the Secretary of Veterans Affairs,

"(IV) the Director of the Office of Personnel Management.",

(7) by striking "qualified employer" each place it appears and inserting "employer",

(8) by striking subparagraph (F), and

(9) by inserting "AND GROUP HEALTH PLAN" in the heading thereof.

(c) DATA BANK.—Paragraph (5) of section 1862(b) of the Social Security Act (42 U.S.C. 1395y(b)) is amended by adding at the end thereof the following new subparagraph:

"(F) MEDICARE SECONDARY PAYER DATA BANK.—The Secretary shall collect and store in a data bank established for purposes of this subsection the information provided to the Secretary by entities as described in this paragraph along with such further information on medicare secondary payer situations as the Secretary deems appropriate not later than July 1, 1994."

(d) CONFORMING AMENDMENTS.—Paragraph (5) of section 1862(b) of the Social Security Act (42 U.S.C. 1395y(b)) is amended—

(1) by striking "a qualified employer (as defined in section 6103(l)(12)(D)(iii) of such Code)" in subparagraph (C)(i) and inserting "an employer", and

(2) by striking clause (iii) of subparagraph (C).

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1992.●

By Mr. PELL (for himself and Mrs. KASSEBAUM):

S. 286. A bill to reauthorize funding for the Office of Educational Research and Improvement, to provide for miscellaneous education improvement programs, and for other purposes; to the Committee on Labor and Human Resources.

OFFICE OF EDUCATIONAL RESEARCH AND IMPROVEMENT REAUTHORIZATION ACT

Mr. PELL. Mr. President, I am pleased to be joined by Senator KASSEBAUM in reintroducing legislation to reauthorize the Office of Educational Research and Improvement. The bill, fashioned in a spirit of bipartisanship last Congress, was reported unanimously out of both the Subcommittee on Education and the full Committee on Labor and Human Resources.

We submit the legislation again this year as a proposal we are hopeful will be given careful consideration by the new administration. At this point, we do not plan separate action on this bill. Our intention is to give the Clinton administration the opportunity to formulate its own set of recommendations in this area, and to submit them to Congress before we proceed with reauthorization. We believe, however, that this bill contains several very important provisions that might be incorporated in an administration bill, and it is in that spirit that it is being introduced.

The Office of Educational Research and Improvement should be a beacon of educational excellence. It should assist educators, schools, communities, and States in charting a course of comprehensive educational improvement. Our legislation strengthens the quality and focus of educational research and development, and improves the linkage between basic research and actual classroom practice.

We propose a new Board of Governors not only to review the research agenda but the operation of the Office as well. We create five new directorates to focus the research effort toward the most critical areas of education: Curriculum, instruction, and assessment; early childhood education and family training; historically underserved populations; school finance and governance; and postsecondary and adult education.

For the first time, dissemination and access become main missions of the Office. Amid the reports of decline, we too often lose sight of programs and efforts of educational excellence which need to be nurtured so that they might be utilized on a more widespread scale.

To strengthen the flow of information to educators, we create a new Office of Dissemination. The national diffusion network will identify successful approaches and make them available to schools throughout the Nation. The Regional Educational Laboratories will facilitate the adaptation of that information to meet an individual school's needs. Senator KASSEBAUM, in particular, has worked very hard indeed on a teacher training program to empower educators with the ability to reach and use the latest educational research and to bring its benefits to our Nation's classrooms, particularly those most in need of help.

Mr. President, as my colleagues are aware, I have had longstanding interest in assessment. We must know how our young people are doing so we might better focus our resources to improve American education. I encourage the administration to examine carefully the standards and assessment language in this legislation. Standards and assessment are critical to the success of education reform.

Our legislation would also create a new international educational exchange program with a special focus on economic and civics and government. Education officials from Eastern Europe have made clear to us that the need and desire for this type of program is overwhelming. It is a wise investment both nationally and internationally.

Following the lead of Senator BINGAMAN, our bill breaks ground in the Department of Education's policy toward technology. Technology is a tool of awesome potential; it is time we began to utilize it creatively and productively. The Office of Educational Technology will promote technology as a means of improving academic access and achievement. I have long advocated a program of technology transfer among Federal agencies, and am very encouraged that this new Office will facilitate bringing together technological advances and programs from other Federal departments so that they may be applied to our schools.

This reauthorization bill also incorporates several proposals by Members outside of the committee, including a Parents as Teachers Program advocated by Senator BOND and a math/science equipment initiative proposed by Senator HATFIELD.

Mr. President, we have worked on this comprehensive legislation for over 2 years. I am pleased with the bill. It is a good, solid bill which will strengthen the Federal effort in educational research and development.

We have attempted to redesign the Office to augment its support of high-quality research, and to strengthen the pipeline of information and technical assistance which will bring research to bear in each and every school. This is an ambitious bill, but if it is embraced and seriously implemented, it could have a profound, and most beneficial impact on education for many years to come.

Mr. President, I ask that the full text of the legislation be printed at this point in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 286

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. REAUTHORIZATION.

Paragraph (1) of subsection (e) of section 405 of the General Education Provisions Act (20 U.S.C. 1221e(e)(1)) is amended by striking "1987" and inserting "1992".

SECTION 1. SHORT TITLE; TABLE OF TITLES.

(a) SHORT TITLE.—This Act may be cited as the "Office of Educational Research and Improvement Reauthorization Act".

(b) TABLE OF TITLES.—The table of titles is as follows:

TITLE I—OFFICE OF EDUCATIONAL RESEARCH AND IMPROVEMENT

SEC. 101. OFFICE OF EDUCATIONAL RESEARCH AND IMPROVEMENT.

(a) IN GENERAL.—Section 405 of the General Education Provisions Act (20 U.S.C. 1221e et seq.) is amended to read as follows:

"SEC. 405. OFFICE OF EDUCATIONAL RESEARCH AND IMPROVEMENT.

"(a) PURPOSES; COMPOSITION; DEFINITIONS.—

"(1) PURPOSE.—The purposes of the Office of Educational Research and Improvement are to—

"(A) assess, promote, and improve the quality and equity of education in the United States, so that all Americans have an equal opportunity to receive an education of the highest quality;

"(B) provide new directions for the federally supported developmental and research activities with a view toward reform in the Nation's school systems, achieving national education goals and effecting national policy for education;

"(C) provide leadership in the scientific inquiry into the educational process;

"(D) provide leadership in advancing the practice of education as an art, science, and profession;

"(E) collect, analyze, and disseminate statistics and other data related to education in the United States and other nations; and

"(F) make available to the Congress and the people of the United States the results of research and development activities in the field of education in order to bring research directly to the classroom to improve educational practice.

"(2) COMPOSITION.—

"(A) IN GENERAL.—The Office shall be administered by the Assistant Secretary and shall include—

"(i) the Distinguished Board of Governors for Educational Research described in subparagraph (B);

"(ii) the Directorates for Educational Research described in subsections (c) through (h);

"(iii) the regional educational laboratories described in subsection (k);

"(iv) the Office of Educational Dissemination described in subsection (m);

"(v) the National Education Library described in subsection (o);

"(vi) the Education Resources Information Clearinghouses described in subsection (p);

"(vii) the National Center for Education Statistics, including the National Assessment of Educational Progress; and

"(viii) such other entities as the Assistant Secretary deems appropriate to carry out the purposes of the Office.

"(B) DISTINGUISHED BOARD OF GOVERNORS.—

"(i) DISTINGUISHED BOARD OF GOVERNORS.—The Distinguished Board of Governors shall consist of 9 members to be appointed by the President, by and with the advice and consent of the Senate, and the Assistant Secretary ex officio.

"(ii) QUALIFICATIONS.—(I) The persons nominated for appointment as members of the Board shall be nominated solely on the basis of—

"(aa) eminence in fields of basic or applied research, or dissemination of such research; or

"(bb) established records of distinguished service in educational research and the education professions.

"(II) In making nominations under this clause, the President is requested to give due consideration to equitable representation of educational researchers who—

"(aa) are women;

"(bb) represent minority groups; or

"(cc) are classroom teachers with research experience.

"(III) The President is requested in the making of nominations of persons for appointment as members, to give due consideration to any recommendations for nomination which may be submitted to the President by the National Academy of Education and the National Academy of Sciences.

"(IV) A nominee for membership on the Board, if confirmed, may not serve on any other Department of Education advisory board, panel, including peer review panel, or task force, or as a paid consultant of such Department.

"(iii) TERM.—(I) The term of office of each member of the Board shall be 6 years, except that any member appointed to fill a vacancy occurring prior to the expiration of the term for which the member's predecessor was appointed shall be appointed for the remainder of such term. Any person, other than the Assistant Secretary, who has been a member of the Board for 12 consecutive years shall thereafter be ineligible for appointment during the 6-year period following the expiration of such twelfth year.

"(II) The members of the Board shall select a Chairperson from among such members.

"(III) A majority of the appointed members of the Board shall constitute a quorum.

"(IV) From amounts appropriated pursuant to the authority of subsection (q), the Board shall appoint an Executive Director, and may with the concurrence of a majority of its members, permit the appointment of a staff consisting of not more than 3 professional staff members and clerical staff members as may be necessary and selected by the Board. Such staff shall be appointed by the Assistant Secretary and assigned at the direction of the Board. The professional members of such staff may be appointed without regard to the provisions of title 5, United States Code, governing appointments in the competitive services, and may be paid without regard to the provisions of chapter 51 and subchapter 53 of such title relating to classification and general schedule pay rates.

"(iv) RESPONSIBILITIES.—The Board shall provide oversight of the Office, and shall—

"(I) advise the Nation on the Federal research and development effort;

"(II) recommend ways for strengthening active partnerships among researchers, educational practitioners and policymakers;

"(III) recommend ways to strengthen interaction and collaboration between the various program offices and components;

"(IV) solicit advice and information from the educational field, to define research needs and suggestions for research topics, and shall involve educational practitioners, particularly teachers, in this process;

"(V) provide recommendations for translating research findings into workable, adaptable models for use in policy and in practice across different settings, and recommendations for other forms of dissemination;

"(VI) provide recommendations for creating incentives to draw talented young people into the field of educational research, including scholars from disadvantaged and minority groups;

"(VII) provide recommendations for new studies to close gaps in the research base;

"(VIII) advise the Assistant Secretary on standards and guidelines for research programs and activities to ensure that research is of high quality and is free from undue partisan or political influence; and

"(IX) provide recommendations for coordination and synthesis of research among directorates.

"(v) MEETINGS AND REPORTS.—(I) The Board is authorized to appoint from among its members such committees as the Board deems necessary, and to assign to committees so appointed such survey and advisory functions as the Board deems appropriate to assist the Board in exercising its powers and functions under this section.

"(II) From amounts appropriated pursuant to subsection (g), the Board shall render to the President, for submission to the Congress no later than January 15 of each evennumbered year, a report on the activities of the Office, and on education, educational research, national indicators and data gathering in general.

"(C) DEFINITION.—For the purposes of this section—

"(i) the term 'Office', unless otherwise specified, means the Office of Educational Research and Improvement established by section 209 of the Department of Education Organization Act;

"(ii) the term 'Assistant Secretary' means the Assistant Secretary for Educational Research and Improvement established by section 202 of the Department of Education Organization Act;

"(iii) the term 'Board' means the Distinguished Board of Governors for Educational Research established under paragraph (2)(B);

"(iv) the term 'education research' includes basic and applied research, inquiry with the purpose of applying tested knowledge gained to specific educational settings and problems, development, planning, surveys, assessments, evaluations, investigations, experiments and demonstrations in the field of education and other fields relating to education;

"(v) the term 'dissemination' means the transfer of ideas and products developed through research to educational sites where such ideas and products can be developed, adapted, implemented and operated for the purpose of improvement, communication techniques to spread information, and demonstrations of the utility and applicability of research; and

"(vi) the term 'technical assistance' means assistance in identifying, selecting or designing solutions based on research to address educational problems, planning and design that leads to adapting research knowledge to school practice, training to implement such solutions, and other assistance necessary to encourage adoption or application of research.

"(b) AUTHORIZED ACTIVITIES.—

"(1) OFFICE.—In fulfilling its purposes under this section, the Office is authorized to—

"(A) conduct and support education-related research and activities, including basic and applied research, development, planning, surveys, assessments, evaluations, investigations, experiments and demonstrations of national significance;

"(B) disseminate the findings of education research, and provide technical assistance to apply such information to specific school problems at the school site;

"(C) collect, analyze and disseminate data related to education;

"(D) promote the use of knowledge gained from research and statistical findings in schools, other educational institutions and communities;

"(E) train individuals in education research; and

"(F) promote the coordination of education research and research support within the Federal Government, and otherwise assist and foster such research.

"(2) ASSISTANT SECRETARY.—

"(A) IN GENERAL.—In carrying out the activities and programs of the Office, the Assistant Secretary shall—

"(i) ensure that there is broad and regular public and professional involvement from the educational field in the planning and carrying out of the Office's activities, including establishing teacher advisory boards for any program office, program or project of the Office as the Assistant Secretary deems necessary;

"(ii) ensure that the selection of research topics and the administration of the program are free from undue partisan or political influence;

"(iii) enter into a contract for the conduct of an independent evaluation of programs and activities carried out through the Office to—

"(I) advise the President, the Congress and the Nation on—

"(aa) the effectiveness of the programs of the Office; and

"(bb) the implementation of projects and programs funded through the Office over time;

"(II) measure the success of educational information dissemination;

"(III) evaluate the impact of educational research on instruction at the school level;

"(IV) assess the usefulness of research and activities carried out by the Office, including products disseminated by the Office;

"(V) evaluate the ability of the Office to keep research funding free from undue partisan or political interference; and

"(VI) provide recommendations for improvement of the programs of the Office;

"(iv) have direct authority to make grants and contracts pursuant to the programs and activities of the Office;

"(v) develop directly, or through grant or contract, standards and guidelines for re-

search, programs and activities carried out through the Office;

"(vi) establish a long- and short-term research agenda in consultation with the Board; and

"(vii) review research priorities established within each directorate and promote research syntheses across the directorates.

"(B) INFORMATION AND TECHNICAL ASSISTANCE.—The Assistant Secretary, through the directorates and regional educational laboratories assisted under this section and other appropriate entities, is authorized to offer information and technical assistance to State and local educational agencies, school boards and schools to ensure that no student is—

"(i) denied access to the same rigorous, challenging curriculum that such student's peers are offered; and

"(ii) grouped or otherwise labeled in such a way that may impede such student's achievement.

"(C) LONG-TERM AGENDA.—One year after the date of enactment of the Office of Educational Research and Improvement Reauthorization Act, the Assistant Secretary shall submit a report to the President and to the Congress on a six-year long-term plan for the educational research agenda for the Office. Upon submission of such report and every 2 years thereafter, the Assistant Secretary shall submit to the President and to the Congress a progress report on the six-year plan, including an assessment of the success or failure of meeting the components of the six-year plan, proposed modifications or changes to the six-year plan, and additions to the six-year plan.

"(3) OPEN COMPETITION.—All grant contracts and cooperative agreements awarded or entered into pursuant to this section shall be awarded or entered into through a process of open competition that shall be announced in the Federal Register.

"(c) DIRECTORATES OF EDUCATIONAL RESEARCH.—

"(1) IN GENERAL.—(A) In carrying out the functions of the Office, the Assistant Secretary shall establish 5 directorates of educational research in accordance with this section.

"(B) The Assistant Secretary shall appoint a Director for each directorate. Each such Director shall be a leading professional in the field relevant to the mission of the directorate. Each such Director shall be paid at the rate of pay payable for level IV of the Executive Schedule.

"(C) The Assistant Secretary shall provide for and promote research syntheses across the directorates, and shall coordinate research plans, projects and findings across the directorates. Each Director shall report directly to the Assistant Secretary, regarding the activities of the directorate, and shall work together to promote research syntheses across the directorates.

"(2) DUTIES.—Each such directorate shall—

"(A) carry out its activities directly or through grants, contracts, and cooperative agreements with institutions of higher education, public and private organizations, institutions, agencies or individuals, or a consortia thereof;

"(B) conduct the highest quality basic and applied research in early childhood, elementary and secondary, vocational and higher education which is relevant to the directorate;

"(C) serve as a national database on model and demonstration programs which have particular application to the activities of the directorate, particularly with respect to model programs conducted by business, private and nonprofit organizations and foundations, Essential Schools, Accelerated Schools, New American Schools, charter schools, Comer schools and Schools of the 21st Century;

"(D) support, plan, implement and operate dissemination activities designed to bring the most effective research directly into classroom practice, school organization and management, and teacher preparation and training, and to the extent possible carry out dissemination activities through the use of technology in accordance with such directorate's technology agreement described in section 405A(d)(1);

"(E) support and provide research information that leads to policy formation for State legislatures, State and local boards of education and other policy and governing bodies, to assist such entities in identifying and developing effective policies to promote student achievement and school improvement; and

"(F) coordinate the directorate's activities with the activities of the regional educational laboratories established pursuant to subsection (k) in designing the directorate's research agenda and projects in order to increase the responsiveness of such directorate to the needs of teachers and the educational field and to bring research findings directly into schools to ensure greatest access at the local level to the latest research developments.

"(3) RESERVATIONS.—(A) Each directorate shall reserve in each fiscal year not less than 15 percent of the amount available to such directorate to conduct field-initiated research.

"(B) Each directorate shall reserve not less than one-third of the amount available to such directorate to award a grant or enter into a contract or cooperative agreement with an institution of higher education, a public agency or a private nonprofit organization for the support of one or two long-term national research centers for educational research and development in accordance with paragraph (4).

"(4) NATIONAL RESEARCH CENTERS.—

"(A) DURATION.—The grant, contract, or cooperative agreements awarded or entered into to establish a national research center described in paragraph (3)(B) shall be awarded or entered into for a period of 10 years.

"(B) LOCATION.—Each such center shall be located at a single site with a majority of the staff located at such site.

"(C) STAFF.—The Assistant Secretary shall make available adequate funds for each such center to support a long-term research agenda of sufficient scope and allow a staff of sufficient size and quality to be recruited and hired to support such an agenda.

"(5) REVIEW AND MONITORING.—The Board shall evaluate and provide recommendations regarding the quality of research conducted through each directorate, the relevance of the research topics and the effectiveness of the dissemination of each directorate's activities. The Board shall report such recommendations to the President and the Congress.

"(6) PUBLICATION.—The Assistant Secretary shall publish proposed research priorities developed by each directorate in the Federal Register every 2 years, not later than October 1 of each year, and shall allow a period of 60 days for public comments and suggestions.

"(7) COMPETITION.—Prior to awarding a grant or entering into a contract for a research project or center, the Assistant Secretary shall invite applicants to compete for projects, centers or assistance under this section through notice published in the Federal Register.

"(8) REPORTING AND COORDINATION.—Each Director shall report directly to the Assistant Secretary, regarding the activities of the directorate, and shall work together to promote research syntheses across the directorates.

"(d) NATIONAL DIRECTORATE ON CURRICULUM, INSTRUCTION, AND ASSESSMENT.—The Assistant Secretary shall establish and carry out the National Directorate on Curriculum, Instruction and Assessment. The directorate established under this subsection is authorized to conduct research on—

"(1) methods to improve student knowledge at all levels in English, mathematics, science, history, geography, civics and government, foreign languages, arts and humanities, and economics;

"(2) methods to improve the process of reading, the craft of writing and the growth of reasoning skills;

"(3) enabling students to develop higher order thinking skills;

"(4) methods to teach effectively all students in mixed-ability classrooms;

"(5) developing or identifying new educational assessments, including performance-based and portfolio assessments which demonstrate a command of knowledge and skill;

"(6) developing standards for what students should know and be able to do, particularly standards of desired performance set at internationally competitive levels;

"(7) the use of testing in the classroom and its impact on improving student achievement, including an analysis of how testing affects what is taught;

"(8) test bias as such bias affects historically underserved and minority populations;

"(9) research on test security, accountability, validity, reliability and objectivity;

"(10) relevant teacher training and instruction in giving a test, scoring a test and in the use of test results to improve student achievement;

"(11) curriculum development designed to meet national standards, including assistance to States to develop such curriculum; and

"(12) the use of technology in accordance with such directorates technology agreement described in section 405A(d)(1) as a learning tool and as such technology is used in testing.

"(e) NATIONAL DIRECTORATE ON EARLY CHILDHOOD LEARNING, FAMILIES AND COMMUNITIES.—The Assistant Secretary shall establish and carry out the National Directorate on Early Childhood Learning, Families and Communities. The directorate established under this subsection is authorized to conduct research on—

"(1) effective learning methods and curriculum for early childhood learning;

"(2) the importance of family literacy and parental involvement in student learning;

"(3) the impact that outside influences have on learning, including television, and drug and alcohol abuse;

"(4) methods for integrating learning in settings other than the classroom, such as within families and communities, with a special emphasis on character development and the value of hard work;

"(5) teacher training on early childhood education and family literacy;

"(6) research on readiness to learn, including topics such as prenatal care, nutrition and health services;

"(7) the use of technology in accordance with such directorate's technology agree-

ment described in section 405A(d)(1) to enhance effective learning methods for early childhood learning; and

"(8) other topics relevant to the mission of the directorate.

"(f) NATIONAL DIRECTORATE ON THE EDUCATIONAL ACHIEVEMENT OF HISTORICALLY UNDERSERVED POPULATIONS.—The Assistant Secretary shall establish and operate a National Directorate on the Educational Achievement of Historically Underserved Populations. The directorate established under this subsection is authorized to conduct research on—

"(1) the quality of educational opportunities afforded historically underserved populations, including minority students, students with disabilities, the economically disadvantaged, girls, women, limited-English proficient students and economically disadvantaged students, and particularly the quality of educational opportunities afforded such populations in highly concentrated urban areas and sparsely populated rural areas;

"(2) effective institutional practices for expanding opportunities for such groups;

"(3) methods for overcoming the barriers to learning which may impede student achievement;

"(4) innovative teacher training on methods to improve the educational achievement of the historically underserved;

"(5) the use of technology in accordance with such directorate's technology agreement described in section 405A(d)(1) to improve the educational achievement of the historically underserved; and

"(6) other topics relevant to the mission of the directorate.

"(g) NATIONAL DIRECTORATE ON SCHOOL ORGANIZATION, STRUCTURE AND FINANCE.—The Assistant Secretary shall establish and operate a National Directorate on School Organization, Structure and Finance. The directorate established under this subsection is authorized to conduct research on—

"(1) school-based management, shared decisionmaking and other innovative school structures which show promise for improving student achievement;

"(2) innovative school design, including lengthening the school day and the school year, reducing class size and building professional development into the weekly school schedule;

"(3) the social organization of schooling and the inner-workings of schooling;

"(4) effective approaches to organizing learning;

"(5) effective ways of grouping students for learning so that a student is not labeled or stigmatized in ways that may impede such student's achievement;

"(6) the amount of dollars allocated for education that are actually spent on direct learning;

"(7) disparity in school financing among States and school districts;

"(8) the use of technology in accordance with such directorate's technology agreement described in section 405A(d)(1) to assist in school-based management and to ameliorate the effects of disparity in school financing among States and school districts; and

"(9) other topics relevant to the mission of the directorate.

"(h) NATIONAL DIRECTORATE ON POSTSECONDARY AND ADULT EDUCATION.—The Assistant Secretary is authorized to establish and operate a National Directorate on Postsecondary and Adult Education. The directorate established under this subsection is authorized to conduct research on—

"(1) the most effective training methods for adults to upgrade education and vocational skills;

"(2) opportunities for adults to continue their education beyond higher education and graduate school, in the context of lifelong learning;

"(3) adult literacy and effective methods, including technology to eliminate illiteracy;

"(4) preparing students for a lifetime of work, the ability to adapt through retraining to the changing needs of the work force and the ability to learn new tasks;

"(5) disparity in school financing among States and school districts;

"(6) the use of technology in accordance with such directorate's technology agreement described in section 405A(d)(1) to develop and deliver effective training methods for adults to upgrade their education and vocational skills; and

"(7) other topics relevant to the mission of the directorate.

"(i) PERSONNEL.—

"(1) IN GENERAL.—From amounts appropriated pursuant to the authority of subsection (q), the Assistant Secretary may appoint, for terms not to exceed 3 years (without regard to the provisions of title 5 of the United States Code governing appointment in the competitive service) and may compensate (without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates) such scientific or professional employees of the Office as the Assistant Secretary considers necessary to accomplish its functions. The Assistant Secretary may also appoint and compensate not more than one-fifth of the number of full-time, regular scientific or professional employees of the Office without regard to such provisions. The rate of basic pay for such employees may not exceed the maximum annual rate of pay for grade GS-15 under section 5332 of title 5 of the United States Code.

"(2) REAPPOINTMENT.—The Assistant Secretary may reappoint employees described in paragraph (1) upon presentation of a clear and convincing justification of need, for 1 additional term not to exceed 3 years. All such employees shall work on activities of the Office and shall not be reassigned to other duties outside the Office during their term.

"(j) SELECTION PROCEDURES AND FELLOWSHIPS.—

"(1) SELECTION PROCEDURES.—(A) When making competitive awards under this section, the Assistant Secretary shall—

"(i) solicit recommendations and advice regarding research priorities, opportunities, and strategies from qualified experts, such as education professionals and policymakers, personnel of the regional educational laboratories described in subsection (k) and of the research and development centers assisted under this section, and the Board, as well as parents and other members of the general public;

"(ii) employ suitable selection procedures utilizing the procedures and principles of peer review, except where such peer review procedures are clearly inappropriate given such factors as the relatively small amount of a grant or contract or the exigencies of the situation; and

"(iii) determine that the activities assisted will be conducted efficiently, will be of high quality, and will meet priority research and development needs under this section.

"(B) Whenever the Assistant Secretary enters into a cooperative agreement under this section, the Assistant Secretary shall negotiate any subsequent modifications in the cooperative agreement with all parties to the agreement affected by the modifications.

"(2) FELLOWSHIPS.—(A) The Assistant Secretary shall publish proposed research priorities for the awarding of research fellowships under this paragraph in the Federal Register every 2 years, not later than October 1 of each year, and shall allow a period of 60 days for public comments and suggestions.

"(B) Prior to awarding a fellowship under this paragraph, the Assistant Secretary shall invite applicants to compete for such fellowships through notice published in the Federal Register.

"(C) From amounts appropriated pursuant to the authority of subsection (q), the Assistant Secretary may establish and maintain research fellowships in the Office, for scholars, researchers, policymakers, education practitioners and statisticians engaged in the use, collection and dissemination of information about education and educational research. Subject to regulations published by the Assistant Secretary, fellowships may include such stipends and allowances, including travel and subsistence expenses provided under title 5, United States Code, as the Assistant Secretary considers appropriate.

"(k) REGIONAL EDUCATIONAL LABORATORIES FOR RESEARCH AND DISSEMINATION.—

"(1) IN GENERAL.—The Assistant Secretary shall support at least 10 but not more than 15 regional educational laboratories established by public agencies or private nonprofit organizations.

"(2) DEFINITION.—For purposes of this subsection, the term 'regional educational laboratory' means a public agency or institution or a private nonprofit organization which—

"(A) serves the education improvement needs in a geographic region of the United States; and

"(B) operates under the direction of a governing board, the members of which—

"(i) are representative of that region;

"(ii) include teachers; and

"(iii) have sole authority for determining, subject to the requirements of this section, the mission of such laboratory.

"(3) DUTIES.—Each regional educational laboratory shall—

"(A) serve the educational improvement needs of the region by bringing educational research to bear upon promoting school improvement and academic achievement and on correcting educational deficiencies;

"(B) develop a plan for identifying needs and for serving the needs of the region by conducting a continuing survey of the educational needs, strengths and weaknesses within the region, including a process of open hearings to solicit the views of schools, teachers, administrators, parents, local educational agencies, and State educational agencies within the region;

"(C) have as such laboratory's central mission the dissemination of educational research to schools, teachers, local educational agencies and State educational agencies, and through such dissemination and the provision of technical assistance serve the educational needs of the region;

"(D) use applied educational research to assist in solving site-specific problems and to assist in development activities;

"(E) conduct applied research projects designed to serve the particular needs of the region only in the event that such quality applied research does not exist in such region;

"(F) facilitate school restructuring at the individual school level, including technical assistance for adapting model demonstration grant programs to each school;

"(G) facilitate communication between educational experts, school officials, and teachers and parents to enable such individuals to assist schools to develop a plan to meet the national education goals;

"(H) facilitate communication among program offices, programs and projects of the Office;

"(I) bring teams of experts together to develop and implement school improvement plans and strategies;

"(J) provide technical assistance to State and local educational agencies, school boards, State boards of education and schools in accordance with the prioritization described in paragraph (4)(E);

"(K) establish an open hearing process for schools, teachers, parents and educational organizations to identify particular educational needs within the region;

"(L) provide training in the field of education research and related areas, in the use of new educational methods, practices, techniques and products developed in connection with such activities, for which the regional educational laboratory shall be authorized to support internships and fellowships and to provide stipends;

"(M) coordinate such laboratory's activities with the directorates assisted under this section in designing such laboratory's services and projects in order to—

"(i) maximize the use of research conducted through the directorates in the work of such laboratory;

"(ii) keep the directorates apprised of the work of the regional educational laboratories in the field; and

"(iii) inform the directorates about additional research needs identified in the field; and

"(N) collaborate with the State educational agencies in the region in developing the plan for serving the region.

"(4) GOVERNING BOARD.—In carrying out the activities described in paragraph (3), the governing board described in subparagraph (B) of paragraph (2) of each region shall—

"(A) ensure that the regional educational laboratory attains and maintains a high level of quality in its work and products;

"(B) establish standards to ensure that the regional educational laboratory has strong and effective governance, organization, management, and administration and employs qualified staff;

"(C) encourage the regional educational laboratory to carry out such laboratory's duties in such a manner as will make progress toward achieving the national education goals;

"(D) conduct a continuing survey of the educational needs, strengths and weaknesses within the region, including a process of open hearings to solicit the views of schools and teachers; and

"(E) prioritize, and ensure that the regional educational laboratory serves the needs within the region based upon economic disadvantage in urban and rural areas of such region.

"(5) COMPETITION.—(A) Prior to entering into a contract under this subsection, the Assistant Secretary shall invite applicants to compete for such regional educational laboratory through notice published in the Federal Register or Commerce Business Daily.

"(B) Each application for assistance under this subsection shall contain such information as the Assistant Secretary may reasonably require, including assurances that the regional educational laboratory will address the activities described in paragraph (3).

"(C) No contract shall be entered into for assistance under this subsection unless—

"(i) proposals for assistance are solicited from regional educational laboratories by the Office;

"(ii) proposals for assistance are developed by the regional educational laboratories in consultation with the Office; and

"(iii) the Office determines that the proposed activities will be consistent with the education research and development program and dissemination activities which are being conducted by the Office.

"(6) ADDITIONAL PROJECTS.—In addition to activities described in paragraph (3), the Assistant Secretary, from amounts appropriated pursuant to subsection (q)(3), is authorized to enter into agreements with a regional educational laboratory for the purpose of carrying out additional projects to enable such regional educational laboratory to assist in efforts to achieve the national education goals.

"(7) SPECIAL RULE.—No regional educational laboratory shall by reason of receipt of assistance under this section be ineligible to receive any other assistance from the Office authorized by law.

"(8) PLAN.—Not later than July 1 of each year, each regional educational laboratory shall submit to the Assistant Secretary a plan covering the succeeding fiscal year, in which such laboratory's mission, activities and scope of work are described, including a general description of—

"(A) the plans such laboratory expects to submit in the 4 succeeding years; and

"(B) an assessment of how well such laboratory is meeting the needs of the region.

"(9) CONTRACT DURATION.—The Assistant Secretary shall enter into a contract for the purpose of supporting a regional educational laboratory under this subsection for a minimum of 5 years.

"(10) CONSTRUCTION.—Nothing in this subsection shall be construed to require any modifications in the regional educational laboratory contracts in effect on the date of enactment of the Office of Educational Research and Improvement Reauthorization Act.

"(l) TEACHER RESEARCH DISSEMINATION NETWORK.—

"(1) FINDINGS.—The Congress finds that—

"(A) education research, including research funded by the Office, is not having the impact on the Nation's schools that such research should;

"(B) relevant education research and resulting solutions are not being adequately disseminated to the teachers that need such research and solutions;

"(C) there are not enough linkages between the research and development centers assisted under this section, the regional educational laboratories described in subsection (k), the National Diffusion Network State facilitators, the Education Resources Information Clearinghouses, and the public schools to ensure that research on effective practice is disseminated and technical assistance provided to all teachers;

"(D) the average teacher has almost no time to plan or engage in a professional dialogue with such teacher's peers about strategies for improving learning;

"(E) teachers do not have direct access to information systems or networks;

"(F) teachers have little control over what in-service education teachers will be offered; and

"(G) individual teachers are not encouraged to move beyond the walls of their school buildings to identify and use outside resources.

"(2) PROGRAM AUTHORIZED.—

"(A) IN GENERAL.—The Assistant Secretary is authorized to award grants to or enter into contracts with regional educational laboratories to enable such laboratories to carry out the activities described in paragraph (3) for not more than 250 teacher participants in any fiscal year.

"(B) AWARD BASIS.—

"(i) IN GENERAL.—The Assistant Secretary shall award grants and enter into contracts under this subsection in an equitable manner and shall provide assistance on the basis of the number of teachers, schools and students located in each region.

"(ii) SPECIAL RULES.—In the case where one or more regional laboratories fail to submit a plan acceptable to the Secretary in accordance with paragraph (3)(D)(ii)(I), the Assistant Secretary may—

"(I) enter into a grant or contract with a regional laboratory to serve more than one region; or

"(II) redistribute funds appropriated to carry out this subsection among regional educational laboratories receiving assistance under this subsection.

"(C) DURATION.—Grants or contracts under this subsection shall be awarded for a period of 3 years.

"(3) PROGRAM ACTIVITIES.—

"(A) MANDATORY.—

"(i) IN GENERAL.—(I) Each regional educational laboratory receiving a grant or entering into a contract under this subsection shall carry out 3 one-year-long programs of providing training to teachers relevant to the needs and problems of the schools and school districts in which teachers teach for the purpose of—

"(aa) educating such teachers on how to acquire information about education research findings and best practices and about using the educational infrastructure assisted by the Department of Education and other major educational research organizations; and

"(bb) providing such teachers with current education research and development theory and practice.

"(II) Teachers that participate in training assisted under this subsection shall be known as 'teacher research dissemination experts'.

"(ii) SUMMER TRAINING.—The program described in clause (i) shall provide teachers with training during the summer which shall—

"(I) give teachers knowledge and guidance in using the existing educational improvement services and resources funded by the Department of Education, including the products and work of the regional educational laboratories and the National Diffusion Network, the available reports and work underway in the centers and directorates assisted under this section, the information and access strategies for using the Education Resources Information Clearinghouses and other relevant information centers, and the products and services offered directly from the Department of Education;

"(II) certify participating teachers in a small number, such as 3 to 4, of products or programs developed by the regional educational laboratories, the National Diffusion Network, the national research centers, or the directorates of the Office, that the teachers judge most relevant to the needs of their district; and

"(III) inform participating teachers about government programs, including programs in government agencies other than the Department of Education, which offer research opportunities and funding.

"(iii) SCHOOL YEAR ACTIVITIES.—The program described in clause (i)—

"(I) shall provide teachers participating in such program during the school year with—

"(aa) opportunities to meet with other such teachers to exchange experiences;

"(bb) additional training or assistance in using or applying the information provided during the summer training as needed or requested; and

"(cc) updates in education research, information and findings;

"(II) shall provide such teachers during the school year with the opportunity to provide feedback into the educational research infrastructure regarding needed research and ways to improve the dissemination of information; and

"(III) may make use of video conferences for some of the training to reduce travel time and expenses.

"(B) PERMISSIVE.—If the amount appropriated pursuant to subsection (q)(4) is greater than $30,000,000, then—

"(i) first, the number of teachers which each teacher research dissemination expert is expected to reach, as defined in subsection (l)(5)(B)(iii), may be decreased as appropriate; after which

"(ii) the program described in clause (i) of subparagraph (A) may include additional teacher training activities and teacher responsibilities related to such training, including—

"(I) training in applied research methodologies;

"(II) assistance in conducting applied research;

"(III) teacher research sabbaticals;

"(IV) training in assessment and testing;

"(V) training in developing and implementing effective teacher in-service training;

"(VI) training in change management, including strategies for restructuring schools, building local capacity, and generally strengthening the culture of schools so that the culture of school is conducive and supportive of change, including training in interpersonal and leadership skills; and

"(VII) developing strategies that could be used to restructure the school day to allow more time for planning and teacher collaboration.

"(C) TEACHER RESPONSIBILITIES.—Each teacher participating in a program assisted under this subsection shall, during the school year—

"(i) meet with other teachers in the school district of such participating teacher to provide such other teachers with information about how to acquire information regarding education research findings and best practices, including what resources are available to such other teachers from the Department of Education, how to obtain products and technical services from the Department, and how to submit programs and products to the National Diffusion Network;

"(ii) help interested schools identify resources needed to address the school's needs and act as liaison between the schools and the appropriate resource bodies, such as regional educational laboratories, centers or directorates assisted under this section, the National Diffusion Network, universities, experts, scholars, consultants and other schools and school districts that may be of assistance;

"(iii) teach other teachers how to use the products or programs in which the teacher was certified pursuant to subclause (II) of subparagraph (A)(ii);

"(iv) inform teachers about how teachers can obtain Federal research funding, fellowships, and sabbaticals; and

"(v) survey teacher needs in the areas of research and development.

"(D) APPLICATION.—

"(i) IN GENERAL.—Each regional educational laboratory desiring a grant or contract under this subsection shall submit to the Secretary an application at such time, in such manner and accompanied by such information as the Assistant Secretary may reasonably require.

"(ii) CONTENTS.—Each application described in clause (i) shall—

"(I) contain a plan acceptable to the Assistant Secretary for conducting the program to be assisted under this subsection;

"(II) contain assurances that the regional educational laboratory shall provide each participating teacher with a stipend for the entire summer recess in an amount approximately equal to one-third of such teacher's annual salary and travel expenses, in order to permit a teacher to participate in the training program during the summer without incurring a loss of income;

"(III) contain assurances that each teacher participating in the program shall receive an award of not more than $10,000 to be used by such teacher during the school year of such teacher's participation to purchase materials, support and coordinate such teacher's teaching activities with other teachers in the school district, and to participate in the program;

"(IV) contain assurances that such regional educational laboratory shall provide not more than $5,000 to each school district or group of school districts having an individual from such district or districts participate in the program assisted under this section for each of the 2 years following such participation to enable such school district or districts to continue efforts to improve dissemination of effective practices and programs within the district or districts;

"(V) contain assurances that representatives of State educational agencies, intermediate educational agencies, teacher centers, teacher educators at institutions of higher education, and school district in-service or curriculum specialists will be eligible to participate in the program assisted under this section if such individuals pay the cost of their participation;

"(VI) describe how such regional educational laboratory will—

"(aa) provide and coordinate its training program with the staffs of the Office, the National Diffusion Network, the centers and directorates assisted under this section, and other regional educational laboratories; and

"(bb) develop training and resource materials and develop teacher conferences jointly with the entities described in item (aa); and

"(VII) contain an assurance that such regional educational laboratory shall not permit a teacher to participate in the program unless such laboratory determines that the teacher will be afforded a full opportunity by the district to perform such teacher's responsibilities described in subparagraph (3)(C).

"(5) TEACHER SELECTION AND ELIGIBILITY.—

"(A) NOMINATION.—Teacher participants in the program assisted under this subsection shall be nominated by their peers at the school district level or by a group of school districts in the case of small school districts.

"(B) ELIGIBILITY.—Each school district or group of school districts desiring to have teachers from such district or districts participate in the program assisted under this subsection shall provide the Assistant Secretary with—

"(i) the names of such teachers;

"(ii) an indication of the types of issues or problems on which each such teacher would like to receive information and training;

"(iii) assurances that teacher research dissemination experts will have access during the school year to approximately 1,000 teachers to train; and

"(iv) assurances that such district or districts will pay the teacher's salary during the school year and release the teacher from such teacher's regular teaching duties for not more than 1 school year as necessary to enable such teacher to participate in such program.

"(C) SELECTION.—Teacher participants shall be selected by the regional educational laboratories in consultation with the National Diffusion Network State facilitators and State educational agencies in the region. Teacher participants shall be selected in such a manner so as to ensure an equitable representation of such teachers by State and school enrollment in the region.

"(6) INDEPENDENT EVALUATION.—

"(A) IN GENERAL.—The Assistant Secretary shall provide for an independent evaluation of the program assisted under this subsection to determine the net impact and cost effectiveness of the program and the reactions of teachers and school districts participating in such program, including any career plan changes of participating teachers.

"(B) DATE.—The evaluation described in subparagraph (A) shall be submitted to the Congress on or before September 1, 1996.

"(C) FUNDING.—The Assistant Secretary may reserve not more than $1,000,000 of the amount appropriated pursuant to the authority of subsection (q)(4) to carry out the evaluation described in this paragraph.

"(7) DEFINITION.—For the purpose of this subsection—

"(A) the term 'educational research infrastructure' means all program offices and components of the Office; and

"(B) the term 'regional educational laboratory' means a laboratory supported by the Assistant Secretary pursuant to subsection (k).

"(m) OFFICE OF EDUCATIONAL DISSEMINATION.—

"(1) IN GENERAL.—The Assistant Secretary shall establish an Office of Educational Dissemination, which may include the Education Resources Information Clearinghouses, the National Diffusion Network, and the National Education Library. The Office of Educational Dissemination shall be headed by a Director appointed by the Assistant Secretary, who has a demonstrated expertise and experience in dissemination.

"(2) DUTIES.—In carrying out its dissemination activities, the Office of Educational Dissemination shall—

"(A) operate a depository for all Department of Education publications and products and make available for reproduction such publications and products;

"(B) coordinate and oversee the dissemination efforts of all Office of Educational Research and Improvement program offices, the regional educational laboratories, the directorates assisted under this section, the National Diffusion Network, and the Education Resources Information Clearinghouses;

"(C) disseminate relevant and useful research, information, products and publications developed through or supported by the Department of Education to all schools throughout the Nation;

"(D) develop the capacity to connect schools and teachers seeking information with the relevant regional educational laboratories assisted under this section, the National Diffusion Network, the directorates assisted under this section, the Education Resources Information Clearinghouses, and Teacher Research Dissemination Network contacts; and

"(E) provide an annual report to the Secretary regarding the types of information, products and services that teachers, schools and school districts have requested and have determined to be most useful, and describe future plans to adapt Department of Education products and services to address the needs of the users of such information, products and services.

"(3) ADDITIONAL ACTIVITIES.—In addition, the Office of Educational Dissemination may—

"(A) use media and other educational technology to carry out dissemination activities, including program development;

"(B) establish and maintain a database on all research and improvement efforts funded through the Department of Education;

"(C) actively encourage cooperative publishing of significant publications;

"(D) disseminate information on successful models and educational methods which have been recommended to the Office of Educational Dissemination by educators, educational organizations, nonprofit organizations, business and foundations, and disseminate such models by including with any such information an identification of the organization or organizations that have recommended the program; and

"(E) engage in such other dissemination activities as the Assistant Secretary determines necessary.

"(n) NATIONAL DIFFUSION NETWORK STATE FACILITATORS.—The National Diffusion Network described in section 1562 of the Elementary and Secondary Education Act of 1965 is authorized to provide information through National Diffusion Network State facilitators on model or demonstration projects funded by the Department of Education. For purposes of carrying out this paragraph, information on such model projects does not have to be approved through the program effectiveness panel, but may be provided directly through the State facilitators. In addition, the National Diffusion Network may disseminate other information available through the Office of Educational Dissemination established under subsection (m) through the National Diffusion Network.

"(o) NATIONAL EDUCATION LIBRARY.—

"(1) ESTABLISHMENT.—There shall be established a National Library of Education at the Department of Education (hereafter in this subsection referred to as the 'Library') which shall—

"(A) be a national resource center for teachers, scholars, State and local education officials, parents, and other interested individuals; and

"(B) provide resources to assist in the—

"(i) advancement of research on education;

"(ii) dissemination and exchange of scientific and other information important to the improvement of education at all levels; and

"(iii) improvement of educational achievement.

"(2) MISSION.—The mission of the Library shall be to—

"(A) become a principal center for the collection, preservation, and effective utilization of the research and other information related to education and to the improvement of educational achievement;

"(B) strive to assure widespread access to the Library's facilities and materials, coverage of all education issues and subjects, and quality control;

"(C) have an expert library staff; and

"(D) use modern information technology that holds the potential to link major libraries and educational centers across the United States into a network of national education resources.

"(3) FUNCTIONS.—The Library shall—

"(A) establish a coherent policy to acquire and preserve books, periodicals, data, prints, films, recordings, and other library materials related to education;

"(B) organize the materials by appropriate cataloging, indexing, and bibliographic listings;

"(C) establish a policy to disseminate information about the materials available in the Library;

"(D) make available through loans, photographic or other copying procedures, or otherwise, such materials in the Library as the Secretary deems appropriate; and

"(E) provide reference and research assistance.

"(4) TASK FORCE.—(A) The Secretary shall appoint a task force of librarians, scholars, teachers, parents, and school leaders (hereafter in this paragraph referred to as the 'Task Force') to provide advice on the establishment of the Library.

"(B) The Task Force shall prepare a workable plan to establish the Library and to implement the requirements of this subsection.

"(C) The Task Force may identify other activities and functions for the Library to carry out, except that such functions shall not be carried out until the Library is established and has implemented the requirements of this subsection.

"(D) The Task Force shall prepare and submit to the Secretary not later than 6 months after the first meeting of the Task Force a report on the activities of the Library.

"(5) LIBRARIAN.—(A) The Secretary shall appoint a librarian to head the Library.

"(B) The individual appointed pursuant to subparagraph (A) shall have extensive experience as a librarian.

"(C) The Secretary shall solicit nominations from individuals and organizations before making the appointment described in subparagraph (A).

"(D) The librarian shall serve for a 5-year term, which may be renewed.

"(E) The librarian shall be paid at not less than the minimum rate of pay payable for level GS–15 of the General Schedule.

"(p) EDUCATION RESOURCES INFORMATION CLEARINGHOUSES.—The Assistant Secretary shall establish and support 16 Education Resources Information Clearinghouses (including directly supporting dissemination services) having the same functions and scope of work as such clearinghouses had on the date of enactment of the Higher Education Amendments of 1986, except that the Assistant Secretary shall establish for the clearinghouses a coherent policy for the abstracting and inclusion in the educational resources information clearinghouse system of books, periodicals, reports, and other materials related to education.

"(q) AUTHORIZATION OF APPROPRIATIONS.—

"(1) IN GENERAL.—(A)(i) There are authorized to be appropriated $70,000,000 for fiscal year 1993 and such sums as may be necessary for each of the fiscal years 1994 through 1999 to carry out subsection (c) relating to the Directorates of Educational Research.

"(ii) From the amount made available under clause (i) in any fiscal year—

"(I) 50 percent of such amount shall be available to carry out subsection (d), relating to the National Directorate on Curriculum, Instruction and Assessment;

"(II) 10 percent of such amount shall be available to carry out subsection (e), relating to the National Directorate on Early Childhood Learning, Families and Communities;

"(III) 10 percent of such amount shall be available to carry out subsection (f), relating to the National Directorate on the Educational Achievement of Historically Underserved Populations;

"(IV) 10 percent of such amount shall be available to carry out subsection (g), relating to the National Directorate on School Organization, Structure and Finance;

"(V) 10 percent of such amount shall be available to carry out subsection (h), relating to the National Directorate on Postsecondary and Adult Education; and

"(VI) 10 percent of such amount shall be available to carry out synthesis and coordination activities described in subsection (c)(1)(C).

"(iii) Not less than 95 percent of funds appropriated pursuant to the authority of clause (i) in any fiscal year shall be expended to carry out this section through grants, cooperative agreements, or contracts.

"(B) There are authorized to be appropriated $12,000,000 for fiscal year 1993 and such sums as may be necessary for each of the fiscal years 1994 through 1999 to carry out the provisions of subsection (c) relating to the salaries and expenses of the directorates of educational research.

"(2) REGIONAL EDUCATIONAL LABORATORIES.—There are authorized to be appropriated $37,000,000 for fiscal year 1993 and such sums as may be necessary for each of the fiscal years 1994 through 1999 to carry out subsection (k), relating to the regional educational laboratories.

"(3) OFFICE OF EDUCATIONAL DISSEMINATION.—There are authorized to be appropriated $5,000,000 for fiscal year 1993 and such sums for each of the fiscal years 1994 through 1999 to carry out subsections (m) and (k)(6), relating to the Office of Educational Dissemination and additional projects for regional education laboratories, respectively.

"(4) TEACHER RESEARCH DISSEMINATION NETWORK.—There are authorized to be appropriated $20,000,000 for fiscal year 1993 and such sums as may be necessary for each of the fiscal years 1994 through 1999 to carry out subsection (l), relating to the Teacher Research Dissemination Network.

"(5) NATIONAL DIFFUSION NETWORK STATE FACILITATORS.—There are authorized to be appropriated $10,000,000 for the fiscal year 1993 and such sums as may be necessary for each of fiscal years 1994 through 1999 to carry out subsection (n), relating to the National Diffusion Network State Facilitators.

"(6) NATIONAL EDUCATION LIBRARY.—There are authorized to be appropriated $10,000,000 for fiscal year 1993 and such sums as may be necessary for each of the fiscal years 1994 through 1999 to carry out subsection (o), relating to the National Education Library.

"(7) EDUCATION RESOURCES INFORMATION CLEARINGHOUSES.—There are authorized to be appropriated $7,000,000 for fiscal year 1993 and such sums as may be necessary for each of the fiscal years 1994 through 1999 to carry out subsection (p), relating to the Education Resources Information Clearinghouses.

"(8) ADMINISTRATION OF FUNDS.—When more than 1 Federal agency uses funds to

support a single project under this section, the Office may act for all such agencies in administering such funds.".

(b) EXISTING CONTRACTS.—Notwithstanding any other provision of law, contracts for the regional educational laboratories and centers assisted under section 405 of the General Education Provisions Act on the date of enactment of this Act shall remain in effect until the termination date of such contracts, except that the grants for such centers which terminate before the competition for the new centers described in section 405(c)(3)(B) of such Act (as amended by section 101(a) of this Act) is completed may be extended until the time that the awards for such new centers are made.

TITLE II—IMPROVED STATISTICS REGARDING AMERICAN SCHOOLS

SEC. 201. IMPROVED STATISTICS REGARDING AMERICAN SCHOOLS.

(a) IN GENERAL.—Section 406 of the General Education Provisions Act (20 U.S.C. 1221e–1) is amended—

(1) in paragraph (2)(A) of subsection (a), by amending the second sentence to read as follows: "The Commissioner of the National Center for Education Statistics shall possess substantial experience with or knowledge of the data collection efforts of the National Center, expertise in mathematical statistics or statistical methodology, or extensive knowledge of uses of statistics for policy purposes.";

(2) by amending paragraph (1) to read as follows:

"(1)(A) There are authorized to be appropriated $85,000,000 for fiscal year 1993 and such sums as may be necessary for each of the fiscal years 1994 through 1999 to carry out this section.

"(B) There are authorized to be appropriated $15,000,000 for fiscal year 1993 and such sums as may be necessary for each of the fiscal years 1994 through 1999 for the salaries and expenses of the Center.";

(3) in subsection (i)—

(A) in paragraph (2)—

(i) in subparagraph (A), by striking "and regional basis"; and

(ii) in subparagraph (C)—

(I) by redesignating clauses (iii), (iv), and (v) as clauses (iv), (v), and (vi), respectively;

(II) by inserting after clause (ii) the following new clause:

"(iii) The National Assessment shall—

"(I) conduct, in 1994, a trial mathematics assessment for the 4th and 8th grades and a trial reading assessment for the 4th grade, in States that wish to participate, for the purpose of determining whether such assessments yield valid and reliable State representative data;

"(II) develop a trial mathematics assessment for the 12th grade and a trial reading assessment for the 8th and 12th grades, to be administered in 1994 in States that wish to participate, for the purpose of determining whether such assessments yield valid and reliable State representative data;

"(III) conduct, in 1996, trial assessments in mathematics and reading, and plan for a trial assessment in science as determined by the Secretary and the National Assessment Governing Board established by paragraph 5(A)(i) for the 4th, 8th and 12th grades in States that wish to participate in such assessments, for the purpose of gaining additional information about whether such assessments yield valid and reliable State-representative data; and

"(IV) include in each such sample assessment referred to in subclauses (I) and (II) students in public and private schools in a manner that ensures comparability with the national sample."; and

(III) in clause (vi) (as redesignated by clause (i))—

(aa) in the first sentence, by striking "and the fairness and accuracy of the data they produce" and inserting ", the fairness and accuracy of the data produced by the National Assessment, and important issues affecting the quality and integrity of the National Assessment"; and

(bb) by striking "paragraph (C)(i) and (ii)" and inserting "clauses (i), (ii), and (iii)";

(B) in paragraph (5)—

(i) in clause (x) of subparagraph (B), by inserting "who shall be psychometrians, educational psychologists, or measurement specialists, with extensive experience working on large-scale assessments" before the semicolon; and

(ii) in subparagraph (C)—

(I) in clause (i), by adding at the end the following new sentence: "No member of the Board may serve as a consultant to the Department of Education or serve on any other board, committee, panel, task force, or advisory body to the Department of Education simultaneously while serving on the Board."; and

(II) in clause (iii), by striking "technical employees to administer" and inserting "technical employees who by virtue of their education or training and experience are eminently qualified to assist the Board in administering"; and

(C) in subparagraph (E) of paragraph (6), by inserting ", except that no adoption, use or reporting of the achievement goals or statements shall be made until the Commissioner provides for an independent technical review of the replication and validation studies conducted by the Board" after "public"; and

(4) by adding at the end the following new subsection:

"(k) Nothing in this section or in the Privacy Act of 1974 shall be interpreted to restrict the right of the Director of the Congressional Budget Office to secure information, data, estimates and statistics, including information identifying individuals, in the Center's possession, except that the same restrictions on disclosure that apply to the Center under subparagraphs (B) and (G) of subsection (d)(4) shall apply to the Congressional Budget Office.".

(b) ADDITIONAL REPORT.—

(1) IN GENERAL.—The Secretary shall provide for the organization that conducts the independent evaluation required by section 406(i)(2)(C)(vi) of the General Education Provisions Act (as redesignated in subsection (a)(2)(A)(ii)(I)) to study and report to the Congress on—

(A) the process whereby achievement goals are set pursuant to section 406(i)(6) of such Act;

(B) whether such achievement goals are set at an appropriate level; and

(C) the ability of the National Assessment to maintain valid data with respect to trends in student performance.

(2) TIME FOR SUBMISSION OF REPORT.—The report required by paragraph (1) shall be submitted as soon as practicable, but in any event not later than 120 days after the date of the enactment of this Act.

SEC. 202. REPORTS ON SCHOOL DROPOUTS; SINGLE DEFINITION.

Paragraph (4) of section 406(g) of the General Education Provisions Act (20 U.S.C. 1221e–1(g)(4)) is amended—

(1) by amending subparagraph (C) to read as follows:

"(C)(i) The Commissioner shall submit to the Congress by January 1 of each year, beginning on January 1 of 1994, a report which describes the number of school dropouts in elementary and secondary schools in the United States. Such report shall contain statistical information on the number and percentage of elementary and secondary school students, who drop out of school each year, including statistical information stated by—

"(I) race and ethnic origin of such students;

"(II) rural and urban location in the United States (as defined by the Secretary) of such students; and

"(III) the number of such students in individual States and the District of Columbia.

"(ii) The report described in clause (i) shall utilize the single definition of school dropouts developed pursuant to section 6201(a) of the Elementary and Secondary Education Act of 1965."; and

(2) by adding at the end the following new subparagraph:

"(D) STATE INFORMATION.—(i) Each State shall provide to the Secretary such information as the Secretary may determine necessary to carry out the provisions of this section.

"(ii) Each State submitting information to the Secretary pursuant to paragraph (1) may use funds received by the State educational agency under chapter 2 of title I of the Elementary and Secondary Education Act of 1965 to meet any costs associated with collecting the information described in paragraph (1) in the form required by the Commissioner of Education Statistics.".

SEC. 203. NATIONAL ASSESSMENT OF EDUCATIONAL PROGRESS.

Subsection (i) of section 406 of the General Education Provisions Act (20 U.S.C. 1221e–1(i)) is further amended—

(1) in paragraph (1)—

(A) in the first sentence, by inserting "(hereafter in this subsection referred to as the 'National Assessment')" after "Progress"; and

(B) in the second sentence, by striking "of Educational Progress"; and

(2) by adding at the end the following new paragraphs:

"(10) The Secretary of Education and the Secretary of Defense may enter into an agreement, including such terms as are mutually satisfactory, to include in the National Assessment the defense dependents education system established under the Defense Dependents' Education Act of 1978.

"(11) The Secretary of Education and the Secretary of the Interior may enter into an agreement, including such terms as are mutually satisfactory, to include in the National Assessment schools for Indian children operated or supported by the Bureau of Indian Affairs.

"(12) For the purpose of this subsection the term 'State' means each of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, the Republic of Palau, the Federated States of Micronesia, and the Republic of the Marshall Islands.".

SEC. 204. FIELD READERS.

Section 402 of the Department of Education Organization Act (20 U.S.C. 3462) is amended—

(1) by inserting "(a) IN GENERAL.—" before "The Secretary"; and

(2) by adding at the end the following new subsection:

"(b) SPECIAL RULE.—

"(1) IN GENERAL.—Notwithstanding any other provision of law, the Secretary may use not more than 1 percent of the funds ap-

propriated for any education program that awards such funds on a competitive basis to pay the expenses and fees of non-Federal experts necessary to review applications and proposals for such funds.

"(2) APPLICABILITY.—The provisions of paragraph (1) shall not apply to any education program under which funds are authorized to be appropriated to pay the fees and expenses of non-Federal experts to review applications and proposals for such funds.".

SEC. 205. OFFICE OF EDUCATIONAL TECHNOLOGY.

(a) AMENDMENT TO THE DEPARTMENT OF EDUCATION ORGANIZATION ACT.—Title II of the Department of Education Organization Act (20 U.S.C. 3411 et seq.) is amended by adding at the end the following new section:

"OFFICE OF EDUCATION TECHNOLOGY

"SEC. 216. There shall be in the Office of Educational Research and Improvement described in section 209 an Office of Educational Technology, established in accordance with section 405A of the General Education Provisions Act.".

(b) AMENDMENT TO THE GENERAL EDUCATION PROVISIONS ACT.—Part A of the General Education Provisions Act (20 U.S.C. 1221e et seq.) is amended by inserting after section 405 the following new section:

"SEC. 405A. OFFICE OF EDUCATIONAL TECHNOLOGY.

"(a) ESTABLISHMENT.—

"(1) OFFICE ESTABLISHED.—The Secretary shall establish within the Office of Educational Research and Improvement an Office of Educational Technology within 90 days of the date of enactment of the Office of Educational Research and Improvement Reauthorization Act.

"(2) DIRECTOR.—The Office of Educational Technology (hereafter in this section referred to as the 'Office') shall be headed by a Director, who shall be appointed by the Secretary and shall have demonstrated expertise and experience in the application of a broad range of technologies for instruction and educational management, and in planning and policy formulation pertaining to technology application at all levels in the education system. The Director shall be compensated at the rate of pay payable for level IV of the Executive Schedule.

"(b) TECHNOLOGY BOARD.—The Assistant Secretary for Educational Research and Improvement shall appoint a Technology Board consisting of 11 members, of which—

"(1) six such members shall have demonstrated competencies or expertise in developing technology systems;

"(2) five such members shall have past and ongoing experience with education at the State or local school level; and

"(3) at least three such members shall be educators with experience in using technology in the classroom.

"(c) PERSONNEL.—In order to carry out the provisions of this section, the Director may appoint personnel in accordance with title 5, United States Code, and may compensate such personnel in accordance with the General Schedule described in section 5332 of title 5, United States Code.

"(d) FUNCTIONS OF THE OFFICE.—The Secretary, through the Office, shall—

"(1) provide leadership for policy development and coordinate technology related education activities within the Department of Education;

"(2) administer the Star Schools Program, the activities of the Office of Training Technology Transfer, and any other technology programs the Assistant Secretary deems appropriate;

"(3) consult, cooperate, and coordinate educational technology programs with analogous programs of other Federal agencies and initiate interagency agreements for joint funding of such programs;

"(4) make recommendations for wider applications of the use of technology in Federal education programs;

"(5) develop agreements with each of the directorates assisted under section 405 to ensure coordination of technology activities and policies and to guide such directorates in the use of technology in carrying out the duties of such directorates;

"(6) provide guidelines to establish a technology education repository to house existing educational technology, including programming designed for the purpose of locating and disseminating information requested by teachers, administrators and other members of the public utilizing Federal data banks in order to avoid duplication;

"(7) develop a proposal for a system to transfer to local school districts, schools and classrooms nationwide the information described in paragraph (6) via computer systems, visual transmission systems, including open broadcast, closed circuit, cable, microwave, or satellite transmission, the use of video cassettes, video discs, fiber optics, and other systems or devices which produce visual images, and other technological methods;

"(8) develop a proposal for—

"(A) developing a fair system for metering the use of the repository information described in paragraph (6) provided via an electronic network to local classrooms; and

"(B) appropriately charging for copyrighted materials and computer access time; and

"(9) promote the use of technology to assist the Office of Educational Research and Improvement in carrying out the dissemination activities of the Office of Educational Research and Improvement.

"(e) TRANSFER OF THE OFFICE OF TRAINING TECHNOLOGY TRANSFER.—The Office of Training Technology Transfer as established under section 6103 of the Training Technology Transfer Act of 1988 is transferred to the Office.

"(f) STUDY ON IMPLEMENTATION OF A NATIONAL TECHNOLOGY REPOSITORY AND TRANSFER SYSTEM.—

"(1) IN GENERAL.—Upon completion of the guidelines for a technology education repository described in subsection (d)(6) and the development of a system to transfer such information to local school districts, schools and classrooms in accordance with subsection (d)(7), the Secretary shall provide for an independent study to—

"(A) determine the estimated costs that would be incurred in the implementation of such repository and system; and

"(B) assess the availability of technology at the local school district, school and classroom level to access the educational technology to be transmitted.

"(2) SPECIAL RULE.—In carrying out the study described in paragraph (1), studies conducted by other Federal agencies may be utilized, if applicable.

"(g) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated $3,000,000 for the fiscal year 1993 and such sums as may be necessary for each of the fiscal years 1994 through 1999 for salaries and expenses of the Office.".

TITLE III—EDUCATIONAL IMPROVEMENT PROGRAMS

PART A—INTERNATIONAL EDUCATION PROGRAM

SEC. 311. INTERNATIONAL EDUCATION PROGRAM.

(a) PROGRAM ESTABLISHED.—The Secretary shall carry out an International Education Program in accordance with this section that shall provide for—

(1) international achievement comparisons;

(2) the study of international education programs and delivery systems; and

(3) an international education exchange program.

(b) ASSESSMENT AND INFORMATION.—The Secretary shall award grants for the study, evaluation and analysis of education systems in other nations, particularly Great Britain, France, Germany and Japan. Such studies shall focus upon a comparative analysis of curriculum, methodology and organizational structure, including the length of the school year and school day. In addition, the studies shall provide an analysis of successful strategies employed by other nations to improve student achievement, with a specific focus upon application to schooling in our Nation.

(c) ACHIEVEMENT COMPARISONS.—The Secretary shall develop or identify a test or series of tests which may be used to compare achievement levels in reading, mathematics and science, history and geography, civics and government, economics, and foreign languages. In carrying out the provisions of this section, the Secretary shall give priority to applicants who have experience or expertise in calibrating tests for purposes of comparison.

(d) INTERNATIONAL EDUCATION EXCHANGE.—

(1) IN GENERAL.—(A) The Secretary shall carry out an International Education Exchange Program that shall—

(i) make available to educators from eligible countries exemplary curriculum and teacher training programs in civics and government education and economic education developed in the United States;

(ii) assist eligible countries in the adaptation and implementation of such programs or joint research concerning such programs;

(iii) create and implement educational programs for United States students which draw upon the experiences of emerging constitutional democracies;

(iv) provide a means for the exchange of ideas and experiences in civics and government education and economic education among leaders of participating eligible countries; and

(v) provide support for—

(I) research and evaluation to determine the effects of educational programs on students' development of the knowledge, skills and traits of character essential for the preservation and improvement of constitutional democracy; and

(II) effective participation in and the preservation and improvement of an efficient market economy.

(B) In carrying out the program described in subparagraph (A), the Secretary shall reserve in each fiscal year—

(i) 50 percent of the amount available to carry out this subsection for civics and government education activities; and

(ii) 50 percent of such amount for economic education activities.

(2) CONTRACT AUTHORIZED.—(A) The Secretary is authorized to contract with independent nonprofit educational organizations to carry out the provisions of this subsection. The Secretary shall enter into such contract through an open competition.

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(B) The Secretary shall award at least 1 but not more than 3 contracts described in subparagraph (A) in each of the areas described in subclauses (I) and (II).

(C) The Secretary shall award contracts described in subparagraph (A) so as to avoid duplication of activities in such contracts.

(D) Each organization with which the Secretary enters into a contract pursuant to subparagraph (A) shall—

(i) be experienced in—

(I) the development and national implementation of curricular programs in civics and government education and economic education for students from grades kindergarten through 12 in local, intermediate, and State educational agencies and in private schools throughout the Nation with the cooperation and assistance of national professional educational organizations, colleges and universities, and private sector organizations;

(II) the development and implementation of cooperative university and school based in-service training programs for teachers of grades kindergarten through 12 using scholars from such relevant disciplines as political science, political philosophy, history, law, and economics;

(III) the development of model curricular frameworks in civics and government education and economic education;

(IV) the administration of international seminars on the goals and objectives of civics and government education and economic education in constitutional democracies (including the sharing of curricular materials) for educational leaders, teacher trainers, scholars in related disciplines, and educational policymakers; and

(V) the evaluation of civics and government education and economic education programs; and

(ii) have the authority to subcontract with other organizations to carry out the purposes of this subsection.

(3) ACTIVITIES.—The international education program described in this subsection shall—

(A) provide eligible countries with—

(i) seminars on the basic principles of United States constitutional democracy and economics, including seminars on the major governmental and economic institutions and systems in the United States, and visits to such institutions;

(ii) visits to school systems, institutions of higher learning, and nonprofit organizations conducting exemplary programs in civics and government education and economic education in the United States;

(iii) home stays in United States communities;

(iv) translations and adaptations regarding United States civics and government education and economic education curricular programs for students and teachers, and in the case of training programs for teachers translations and adaptations into forms useful in schools in eligible countries, and joint research projects in such areas;

(v) translation of basic documents of United States constitutional government for use in eligible countries, such as *The Federalist*, selected writings of Presidents Adams and Jefferson and the Anti-Federalists, and more recent works on political theory, constitutional law and economics; and

(vi) research and evaluation assistance to determine—

(I) the effects of educational programs on students' development of the knowledge, skills and traits of character essential for the preservation and improvement of constitutional democracy; and

(II) effective participation in and the preservation and improvement of an efficient market economy;

(B) provide United States participants with—

(i) seminars on the histories, economics and governments of eligible countries;

(ii) visits to school systems, institutions of higher learning, and organizations conducting exemplary programs in civics and government education and economic education located in eligible countries;

(iii) home stays in eligible countries;

(iv) assistance from educators and scholars in eligible countries in the development of curricular materials on the history, government and economics of such countries that are useful in United States classrooms;

(v) opportunities to provide on-site demonstrations of United States curricula and pedagogy for educational leaders in eligible countries; and

(vi) research and evaluation assistance to determine—

(I) the effects of educational programs on students' development of the knowledge, skills and traits of character essential for the preservation and improvement of constitutional democracy; and

(II) effective participation in and improvement of an efficient market economy; and

(C) assist participants from eligible countries and the United States in participating in international conferences on civics and government education and economic education for educational leaders, teacher trainers, scholars in related disciplines, and educational policymakers.

(4) PRINTER MATERIALS AND PROGRAMS.—All printed materials and programs provided to foreign nations under this subsection shall bear the logo and text used by the Marshall Plan after World War II, that is, clasped hands with the inscription "A gift from the American people to the people of (insert name of country)".

(5) PARTICIPANTS.—The primary participants in the international education program assisted under this subsection shall be leading educators in the areas of civics and government education and economic education, including curriculum and teacher training specialists, scholars in relevant disciplines, and educational policymakers, from the United States and eligible countries.

(6) PERSONNEL AND TECHNICAL EXPERTS.—The Secretary is authorized to provide Department of Education personnel and technical experts to assist eligible countries to establish and implement a database or other effective methods to improve educational delivery systems, structure and organization.

(7) DEFINITIONS.—For the purpose of this subsection the term "eligible country" means a Central European country, an Eastern European country, Lithuania, Latvia, Estonia, Georgia, the Commonwealth of Independent States, and any country that formerly was a republic of the Soviet Union whose political independence is recognized in the United States.

(e) AUTHORIZATION OF APPROPRIATIONS.—

(1) ASSESSMENT AND INFORMATION.—There are authorized to be appropriated $2,500,000 for fiscal year 1993 and such sums as may be necessary for each of the fiscal years 1994 through 1999 to carry out subsection (b).

(2) ACHIEVEMENT COMPARISON.—There are authorized to be appropriated $2,500,000 for fiscal year 1993 and such sums as may be necessary for each of the fiscal years 1994 through 1999 to carry out subsection (c).

(3) INTERNATIONAL EDUCATION EXCHANGE.—There are authorized to be appropriated $30,000,000 for fiscal year 1993 and such sums as may be necessary for each of the fiscal years 1994 through 1999 to carry out subsection (d).

PART B—TRANSFER OF EDUCATION AND TRAINING SOFTWARE

SEC. 315. TRANSFER OF EDUCATION AND TRAINING SOFTWARE.

The Training Technology Transfer Act of 1988 (20 U.S.C. 5091 et seq.) is amended by adding after section 6107 the following new section:

"SEC. 6108. AUTHORIZATION OF APPROPRIATIONS.

"There are authorized to be appropriated $3,000,000 for fiscal year 1993 and such sums as may be necessary for each of the fiscal years 1994 through 1999 to carry out this chapter.".

PART C—AMENDMENTS TO THE CARL D. PERKINS VOCATIONAL AND APPLIED TECHNOLOGY EDUCATION ACT

SEC. 321. AMENDMENTS TO THE CARL D. PERKINS VOCATIONAL AND APPLIED TECHNOLOGY EDUCATION ACT.

Section 422 of the Carl D. Perkins Vocational and Applied Technology Education Act (20 U.S.C. 2422) is amended—

(1) in paragraph (2) of subsection (a), by inserting ", including postsecondary employment and training programs," after "training programs"; and

(2) in subsection (b)—

(A) by redesignating subparagraphs (A) and (B) as paragraphs (1) and (2), respectively;

(B) in the matter preceding paragraph (1) (as redesignated in subparagraph (A)), by inserting "the State board or agency governing higher education" after "coordinating council,"; and

(C) in paragraph (1) (as redesignated in subparagraph (A))—

(i) by striking "Act and of" and inserting "Act, of"; and

(ii) by inserting "and of the State board or agency governing higher education" after "Job Training Partnership Act"; and

(3) by redesignating subsection (d) as subsection (e); and

(4) by inserting after subsection (c) the following new subsection:

"(d) DATA COLLECTION SYSTEM.—In the development and design of a system to provide data on graduation or completion rates, job placement rates from occupationally specific programs, and licensing rates, each State board for higher education shall develop a data collection system whose results can be integrated into the occupational information system developed under this section.".

PART D—SATISFACTORY PROGRESS STUDY

SEC. 325. SATISFACTORY PROGRESS STUDY.

Part A of title XIII of the Higher Education Amendments of 1986 (20 U.S.C. 1091 et seq.) is amended by adding at the end the following new section:

"SEC. 1308. SATISFACTORY PROGRESS STUDY.

"(a) STUDY.—The Secretary is authorized to conduct a study of the satisfactory progress requirement described in section 484(c) of the Higher Education Act of 1965. Such study shall—

"(1) examine whether there is a need to apply satisfactory progress requirements to institutions of higher education with short-term periods of instruction, such as less than 1 year, and how such requirements might be applied to such institutions; and

"(2) examine whether there is a need to apply such requirements to the first year of instruction, and in particular, examine the problems the first year students may have in

adjusting to the rigors of postsecondary instruction and assess whether there is a need to provide an initial year before the satisfactory progress requirements are applied.

"(b) DATE.—The study described in subsection (a) shall be completed not later than January 1, 1995.

"(c) REPORT.—

"(1) IN GENERAL.—The Secretary shall submit a report to the Congress on the study described in subsection (a) that—

"(A) assesses how such satisfactory progress requirements are working; and

"(B) makes recommendations on how such satisfactory progress requirements may be strengthened.

"(2) REPORT.—The report described in paragraph (1) shall be completed not later than July 1, 1995.".

PART E—NATIONAL EDUCATION STANDARDS AND ASSESSMENTS COUNCIL

SEC. 331. NATIONAL EDUCATION STANDARDS AND ASSESSMENTS COUNCIL.

(a) ESTABLISHMENT.—There is established within the Department of Education a National Education Standards and Assessments Council (referred to in this part as the "Council").

(b) APPOINTMENT AND COMPOSITION.—

(1) APPOINTMENT.—The Council shall be composed of 15 members (hereafter in this part referred to as "members") appointed by the National Education Goals Panel described in section 113 of the Neighborhood Schools Improvement Act (hereafter in this part referred to as the "Panel").

(2) COMPOSITION.—The Council shall be composed of—

(A) five public officials;

(B) five educators; and

(C) five members of the general public.

(3) TIME.—The members of the Council described in paragraph (2) shall be appointed within 120 days after the date of enactment of this Act.

(c) QUALIFICATIONS.—

(1) IN GENERAL.—Members shall—

(A) be appointed to the Council on the basis of widely recognized experience in, knowledge of, commitment to, and a demonstrated record of service to, education and to achieving education excellence at the Federal, State or local level; and

(B) include curriculum design specialists, subject matter scholars, and testing or measurement experts (experts in educational evaluation, educational measurement, educational assessment, educational psychology, or psychometrics).

(2) NOMINATIONS.—Members under this subsection shall be appointed from among qualified individuals nominated by the public and other groups representative of public officials, educators, and individuals described in subsection (c)(1).

(d) TERMS.—

(1) IN GENERAL.—Except as provided in paragraph (2), the members shall be appointed for 3-year terms, with no member serving more than 2 consecutive terms.

(2) INITIAL SELECTION.—The Panel shall establish initial terms for individuals of 2, 3, or 4 years in order to establish a rotation in which one-third of the members are selected each year.

(A) PUBLIC OFFICIALS.—From among the members appointed under subsection (b)(2)(A), the Panel shall designate 2 appointees to serve 2-year terms, 2 appointees to serve 3-year terms and 1 appointee to serve a 4-year term.

(B) EDUCATORS.—From among the members appointed under subsection (b)(2)(B), the Panel shall designate 2 appointees to serve 2-year terms, 2 appointees to serve 3-year terms and 1 appointee to serve a 4-year term.

(C) GENERAL PUBLIC.—From among the members appointed under subsection (b)(2)(C), the Panel shall designate 2 appointees to serve 2-year terms, 3 appointees to serve 3-year terms and 2 appointees to serve 4-year terms.

(3) CONFLICT OF INTEREST.—(A) No member of the Council may concurrently serve as a member of the Panel or on any other Department of Education advisory board, panel (including a peer review panel), task force, or as a paid consultant of such Department.

(B)(i) No member of the Council may serve on the Council if such person directly or indirectly is the recipient of any Federal funds for curriculum or assessment planning, design, development, or implementation.

(ii) No member of the Council shall have any financial interest in the development of tests or assessments related to the standards described in subsection (e). Any person who served on the Council shall report any subsequent proposals for Federal, State, or local funding related to the standards or assessments described in subsection (e) to the National Goals Panel and to the Department of Education.

(4) DATE OF APPOINTMENT.—The initial members shall be appointed, by the Panel, not later than 120 days after the date of enactment of this Act.

(5) RETENTION.—In order to retain an appointment to the Council, a member must attend at least two-thirds of the scheduled meetings of the Council in any given year.

(6) OFFICER SELECTION.—The members appointed under subsection (b)(2) shall select officers of the Council from among the members of the Council. The officers of the Council shall serve for 1-year terms.

(7) VACANCIES.—A vacancy on the Council shall not affect the powers of the Council, but shall be filled in the same manner as the original appointment.

(8) TRAVEL.—Each member of the Council shall be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5, United States Code, for each day the member is engaged in the performance of duties away from the home or regular place of business of the member.

(9) INITIATION.—The Council may begin to carry out the duties of the Council under this part when—

(A) all 15 members have been appointed; or

(B) 8 members have been appointed pursuant to the provisions of subsection (b).

(e) FUNCTIONS OF THE COUNCIL.—The Council shall—

(1) be a coordinating body to establish national education content and student performance standards;

(2) serve as a coordinating body to encourage a voluntary system of assessments for individual students consistent with the national standards;

(3) develop criteria for world-class content and student performance standards and establish guidelines for standard setting and assessment development, including guidelines for the development of a variety of assessment measures;

(4) establish guidelines for assessments which ensure technical merit through determining that assessments are specifically valid, reliable, and unbiased for any purpose for which the assessments may be used;

(5) establish procedures and criteria for ensuring that, to the extent possible and without sacrificing the validity, reliability, directness, and fairness of the assessments, assessments are comparable to each other;

(6) issue certification of content and student performance standards as world-class and transmit such certification to the Panel for the Panel's certification;

(7) issue criteria for assessments as world-class, and procedures for certification of assessments which meet such world-class content standards, and transmit such criteria and procedures for certification to the Panel for the Panel's certification, except that no assessment may be certified prior to certification of the appropriate content and student performance standards; and

(8) establish guidelines for the use and design of standards and assessments, and of data derived from such assessments, so that—

(A) all students are provided with a rigorous and challenging curriculum designed to meet or exceed the standards;

(B) no student is placed in a curriculum track or is otherwise labeled on the basis of such student's performance on an assessment certified pursuant to this section;

(C) student performance is reported in the context of other relevant information about aggregate student, school and system performance; and

(D) all students are provided multiple opportunities and methods to demonstrate that they have met student performance standards.

(f) PERFORMANCE OF FUNCTIONS.—In carrying out its responsibilities, the Council shall work with Federal and non-Federal agencies and organizations which are conducting research, studies or demonstration projects to determine world-class education standards and assessments based on such standards.

(g) PROCEDURES.—

(1) PUBLICATION.—The Council shall publish in the Federal Register—

(A) proposed criteria for determining what are world-class content and student performance standards;

(B) proposed guidelines for standards setting;

(C) proposed procedures and criteria for certifying content standards as world-class; and

(D) proposed procedures and criteria for certifying assessments of world-class standards, including an evaluation of the extent to which individual student assessments incorporate such final world-class standards.

(2) FINAL REGULATIONS.—Final regulations, reflecting public comment, for the proposals developed in accordance with paragraph (1) shall be published in the Federal Register prior to the implementation of such regulations.

(h) DATA COLLECTION.—The Council shall make arrangements with any appropriate entity to generate or collect such data as may be necessary to carry out the Council's functions.

SEC. 332. ANNUAL REPORTS.

(a) IN GENERAL.—Not later than 1 year after the date the Council concludes its first meeting of members and in each succeeding year, the Council shall prepare and submit to the President, the appropriate committees of Congress, and the Governor of each State a report on its work. Such report shall—

(1) analyze the progress and obstacles, if any, toward the development and certification of world-class content and student performance standards;

(2) analyze the process and implementation of procedures to develop criteria for assessments and certifications that assessments reflect the world-class standards; and

(3) analyze the progress and obstacles, if any, to the adoption of certified content and

student performance standards by State and local educational agencies.

(b) SPECIAL RULE.—In carrying out paragraph (3) of subsection (a), the Council shall collect information on the implementation by State and local educational agencies of certified content standards, including—

(1) adoption of curricula frameworks, including instructional materials, assessments and teacher training that incorporates or reflects world-class content standards;

(2) availability of school resources, including instructional materials and technology, necessary to meet world-class standards;

(3) staff capacity;

(4) school governance systems; and

(5) barriers to implementation of world-class standards.

SEC. 333. POWERS OF THE COUNCIL.

(a) REGIONAL MEETINGS.—The Council shall convene regional meetings, in urban and rural areas, to obtain public involvement in the development of proposed regulations implementing this part. Such meetings shall include individuals and representatives of the groups involved in the development of content and student performance standards and assessments, including educators, administrators, students and parents, curriculum and assessment experts, and organizations which have demonstrated experience in these areas. Such meetings shall provide for a comprehensive discussion and exchange on information regarding the implementation of this part. The Council shall take into account the information received in such meetings in the development of regulations.

(b) INFORMATION.—The Council may secure directly from any department or agency of the United States information necessary to enable the Council to carry out this part. Upon request of the Chairperson of the Council, the head of a department or agency shall furnish such information to the Council to the extent permitted by law.

(c) GIFTS.—The Council may accept, use, and dispose of gifts or donations of services or property.

(d) POSTAL SERVICES.—The Council may use the United States mail in the same manner and under the same conditions as other departments and agencies of the United States.

(e) ADMINISTRATIVE AND SUPPORTIVE SERVICES.—The Secretary shall provide to the Council, on a reimbursable basis, administrative support services as the Council may request.

SEC. 334. ADMINISTRATIVE PROVISIONS.

(a) MEETINGS.—The Council shall meet on a regular basis, as necessary, at the call of the Chairperson of the Council or a majority of its members.

(b) QUORUM.—A majority of the members shall constitute a quorum for the transaction of business.

(c) VOTING.—The Council shall take all action of the Council by a two-thirds majority vote of the total membership of the Council, assuring the right of the minority to issue written views. No individual may vote or exercise any of the powers of a member by proxy.

SEC. 335. DIRECTOR AND STAFF; EXPERTS AND CONSULTANTS.

(a) DIRECTOR.—The Chairperson of the Council shall, in consultation with other members of the Council and without regard to the provisions of title 5, United States Code, relating to the appointment and compensation of officers or employees of the United States, appoint a Director who by virtue of such individual's education or training and experience is eminently qualified to assist the Council in administering the functions described in section 331(e) to be paid at a rate not to exceed the rate of basic pay payable for level V of the Executive Schedule.

(b) APPOINTMENT AND PAY OF STAFF.—The Chairperson may appoint such personnel who by virtue of such personnel's education or training and experience are eminently qualified to assist the Council in administering the functions described in section 331(e) as the Chairperson considers appropriate without regard to the provisions of title 5, United States Code, governing appointments to the competitive service. The staff of the Council may be paid without regard to the provisions of chapter 51 and subchapter III of chapter 53 of title 5, United States Code, relating to classification and General Schedule pay rates. The rate of pay of the staff of the Council shall not exceed the rate of basic pay payable for GS–15 of the General Schedule.

(c) EXPERTS AND CONSULTANTS.—The Council may procure temporary and intermittent services under section 3019(b) of title 5, United States Code, if the individual performing such services, by virtue of such individual's education or training and experience, is eminently qualified to assist the Council in administering the functions described in section 331(e).

(d) STAFF OF FEDERAL AGENCIES.—Upon the request of the Council, the head of any department or agency of the United States is authorized to detail, on a reimbursable basis, any of the personnel of that department or agency to the Council to assist the Council in its duties under this part.

(e) CONFLICT OF INTEREST.—No director, staff, expert, or consultant may serve the Council if such person directly or indirectly has any financial interest in the development of tests or assessments related to the standards described in section 331(e). Any person who served the Council in such capacity shall submit any subsequent proposals for Federal, State, or local funding related to the standards or assessments described in section 331(e) to the National Goals Panel and to the Department of Education.

SEC. 336. EVALUATION.

The Comptroller General of the General Accounting Office shall conduct an evaluation of the work of the Council, in order to evaluate the process by which world-class content and student performance standards have been developed, the contents of such standards, the process by which criteria for assessments of world-class standards have been developed, and the process of determining whether the assessments measure world-class standards. Such evaluation shall include—

(1) an analysis of the technical expertise and objectivity of the Council and the staff of the Council; and

(2) an evaluation of whether—

(A) the standards developed by the Council reflect world-class standards; and

(B) the assessments certified under the procedures of the Council measure the world-class standards.

SEC. 337. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to the Council $2,000,000 for each of the fiscal years 1993 and 1994, and such sums as may be necessary for each succeeding fiscal year thereafter, to carry out this part.

PART F—ELEMENTARY SCIENCE EQUIPMENT PROGRAM

SEC. 341. SHORT TITLE.

This part may be cited as the "Elementary Science Equipment Act".

SEC. 342. STATEMENT OF PURPOSE.

It is the purpose of this part to raise the quality of instruction in mathematics and science in the Nation's elementary schools by providing equipment and materials necessary for hands-on instruction through assistance to State and local educational agencies.

SEC. 343. PROGRAM AUTHORIZED.

The Secretary is authorized to make allotments to State educational agencies under section 344 to enable such agencies to award grants to local educational agencies for the purpose of providing equipment and materials to elementary schools to improve mathematics and science education in such schools.

SEC. 344. ALLOTMENTS OF FUNDS.

(a) IN GENERAL.—From the amount appropriated under section 350 for any fiscal year, the Secretary shall reserve—

(1) not more than one-half of 1 percent for allotment among Guam, American Samoa, the Virgin Islands, the Northern Mariana Islands, the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau according to their respective needs for assistance under this part; and

(2) one-half of 1 percent for programs for Indian students served by schools funded by the Secretary of the Interior which are consistent with the purposes of this part.

(b) ALLOTMENT.—The remainder of the amount so appropriated (after meeting requirements in subsection (a)) shall be allotted among State educational agencies so that—

(1) one-half of such remainder shall be distributed among the State educational agencies by allotting to each State educational agency an amount which bears the same ratio to such one-half of such remainder as the number of children aged 5 to 17, inclusive, in the State bears to the number of such children in all States; and

(2) one-half of such remainder shall be distributed among the State educational agencies according to each State's share of allocations under chapter 1 of title I of the Elementary and Secondary Education Act of 1965,

except that no State shall receive less than one-half of 1 percent of the amount available under this subsection in any fiscal year or less than the amount allotted to such State for fiscal year 1988 under title II of the Education for Economic Security Act.

(c) DEFINITION.—For the purposes of this part the term "State" means each of the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico.

(d) DATA.—The number of children aged 5 to 17, inclusive, in the State and in all States shall be determined by the Secretary on the basis of the most recent satisfactory data available to the Secretary.

SEC. 345. STATE APPLICATION.

(a) APPLICATION.—Each State educational agency desiring to receive an allotment under this part shall file an application with the Secretary which covers a period of 5 fiscal years. Such application shall be filed at such time, in such manner, and containing or accompanied by such information as the Secretary may reasonably require.

(b) CONTENTS OF APPLICATION.—Each application described in subsection (a) shall—

(1) provide assurances that—

(A) the State educational agency shall use the allotment provided under this part to award grants to local educational agencies within the State to enable such local educational agencies to provide assistance to

schools served by such agency to carry out the purpose of this part;

(B) the State educational agency will provide such fiscal control and funds accounting as the Secretary may require;

(C) every public elementary school in the State is eligible to receive assistance under this part once over the 5-year duration of the program assisted under this part;

(D) funds provided under this part will supplement, not supplant, State and local funds made available for activities authorized under this part;

(E) during the 5-year period described in the application, the State educational agency will evaluate its standards and programs for teacher preparation and inservice professional development for elementary mathematics and science;

(F) the State educational agency will take into account the needs for greater access to and participation in mathematics and science by students and teachers from historically underrepresented groups, including females, minorities, individuals with limited-English proficiency, the economically disadvantaged, and individuals with disabilities; and

(G) that the needs of teachers and students in areas with high concentrations of low-income students and sparsely populated areas will be given priority in awarding assistance under this part;

(2) provide, if appropriate, a description of how funds paid under this part will be coordinated with State and local funds and other Federal resources, particularly with respect to programs for the professional development and inservice training of elementary school teachers in science and mathematics; and

(3) describe procedures—

(A) for submitting applications for programs described in sections 346 and 347 for distribution of assistance under this part within the State; and

(B) for approval of applications by the State educational agency, including appropriate procedures to assure that such agency will not disapprove an application without notice and opportunity for a hearing.

(c) STATE ADMINISTRATION.—Not more than 5 percent of the funds allotted to each State educational agency under this part shall be used for the administrative costs of such agency associated with carrying out the program assisted under this part.

SEC. 346. LOCAL APPLICATION.

(a) APPLICATION.—A local educational agency that desires to receive a grant under this part shall submit an application to the State educational agency. Each such application shall contain assurances that each school served by the local educational agency shall be eligible for assistance under this part only once.

(b) CONTENTS OF APPLICATION.—Each application described in subsection (a) shall—

(1) describe how the local educational agency plans to set priorities on the use and distribution among schools of grant funds received under this part to meet the purpose of this part;

(2) include assurances that the local educational agency has made every effort to match on a dollar-for-dollar basis from private or public sources the funds received under this part, except that no such application shall be penalized or denied assistance under this part based on failure to provide such matching funds;

(3) describe, if applicable, how funds under this part will be coordinated with State, local, and other Federal resources, especially with respect to programs for the professional development and inservice training of elementary school teachers in science and mathematics; and

(4) describe the process which will be used to determine different levels of assistance to be awarded to schools with different needs.

(c) PRIORITY.—In awarding grants under this part, the State educational agency shall give priority to applications that—

(1) assign highest priority to providing assistance to schools which—

(A) are most seriously underequipped; or

(B) serve large concentrations or large numbers of economically disadvantaged students;

(2) are attentive to the needs of underrepresented groups in science and mathematics;

(3) demonstrate how science and mathematics equipment will be part of a comprehensive plan of curriculum planning or implementation and teacher training supporting hands-on laboratory activities; and

(4) include plans for dissemination of lessons and activities using equipment and materials purchased pursuant to assistance provided under this part to teachers in schools not receiving such assistance.

SEC. 347. PARTICIPATION OF PRIVATE SCHOOLS.

(a) PARTICIPATION OF PRIVATE SCHOOLS.—To the extent consistent with the number of children in the State or in the school district of each local educational agency who are enrolled in private nonprofit elementary schools, such State educational agency shall, after consultation with appropriate private school representatives, make provision for including services and arrangements for the benefit of such children as will assure the equitable participation of such children in the purposes and benefits of this part.

(b) WAIVER.—If by reason of any provision of State law a local educational agency is prohibited from providing for the participation of children or teachers from private nonprofit schools as required by subsection (a), or if the Secretary determines that a State or local educational agency has substantially failed or is unwilling to provide for such participation on an equitable basis, the Secretary shall waive such requirements and shall arrange for the provision of services to such children or teachers subject to the requirement of this section. Such waivers shall be subject to consultation, withholding, notice, and judicial review requirements described in section 1017 of the Elementary and Secondary Education Act of 1965.

SEC. 348. PROGRAM REQUIREMENTS.

(a) COORDINATION.—Each State educational agency receiving an allotment under this part shall—

(1) disseminate information to school districts and schools, including private nonprofit elementary schools, regarding the program assisted under this part;

(2) evaluate applications of local educational agencies;

(3) award grants to local educational agencies based on the priorities described in section 346(c); and

(4) evaluate local educational agencies' end-of-year summaries and submit such evaluation to the Secretary.

(b) LIMITATIONS ON USE OF FUNDS.—

(1) IN GENERAL.—Except as provided in paragraph (2), grant funds and matching funds under this part only shall be used to purchase science equipment, science materials, or mathematical manipulative materials and shall not be used for computers, computer peripherals, software, textbooks, or staff development costs.

(2) CAPITAL IMPROVEMENTS.—Grant funds under this part may not be used for capital improvements. Not more than 50 percent of any matching funds provided by the local educational agency may be used for capital improvements of classroom science facilities to support the hands-on instruction that this part is intended to support, such as the installation of electrical outlets, plumbing, lab tables or counters, or ventilation mechanisms.

SEC. 349. FEDERAL ADMINISTRATION.

(a) TECHNICAL ASSISTANCE AND EVALUATION PROCEDURES.—The Secretary shall provide technical assistance and, in consultation with State and local representatives of the program assisted under this part, shall develop procedures for State and local evaluations of the programs under this part.

(b) REPORT.—The Secretary shall report to the Congress each year on the program assisted under this part.

SEC. 350. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated $20,000,000 for fiscal year 1993 and such sums as may be necessary for each of the fiscal years 1994 through 1997 to carry out this part.

PART G—PARENTS AS TEACHERS PROGRAMS

SEC. 351. FINDINGS.

The Congress finds—

(1) increased parental involvement in the education of their children appears to be the key to long-term gains for youngsters;

(2) providing seed money is an appropriate role for the Federal Government to play in education;

(3) children participating in the parents as teachers pilot program in Missouri are found to have increased cognitive or intellectual skills, language ability, social skills and other predictors of school success;

(4) most early childhood programs begin at age 3 or 4 when remediation may already be necessary; and

(5) many children receive no health screening between birth and the time they enter school, thus such children miss the opportunity of having developmental delays detected early.

SEC. 352. STATEMENT OF PURPOSE.

It is the purpose of this part to encourage States to develop and expand parent and early childhood education programs in an effort to—

(1) increase parents' knowledge of and confidence in child-rearing activities, such as teaching and nurturing their young children;

(2) strengthen partnerships between parents and schools; and

(3) enhance the developmental progress of participating children.

SEC. 353. DEFINITIONS.

For the purposes of this part—

(1) the term "developmental screening" means the process of measuring the progress of children to determine if there are problems or potential problems or advanced abilities in the areas of understanding and use of language, perception through sight, perception through hearing, motor development and hand-eye coordination, health, and physical development;

(2) the term "eligible family" means any parent with one or more children between birth and 3 years of age;

(3) the term "lead agency" means the office, agency, or other entity in a State designated by the Governor to administer the parents as teachers program authorized by this part or the entity in a State operating a Parents As Teachers Program on the date of enactment of this Act;

(4) the term "parent education" includes parent support activities, the provision of resource materials on child development and parent-child learning activities, private and group educational guidance, individual and group learning experiences for the parent and child, and other activities that enable the parent to improve learning in the home; and

(5) the term "parent educator" means a person hired by the lead agency of a State or designated by local entities who administers group meetings, home visits and developmental screening for eligible families, and is trained by the Parents As Teachers National Center established under section 357.

SEC. 354. PROGRAM ESTABLISHED.

(a) IN GENERAL.—The Secretary is authorized to make grants to States to pay the Federal share of the cost of establishing, expanding, or operating parents as teachers programs.

(b) PRIORITY.—In making grants to States, the Secretary shall establish a priority for applications describing parents as teachers programs that target parents and children at risk, including families on public assistance.

(c) SPECIAL RULE.—Grant funds awarded under this section shall be used so as to supplement, and to the extent practicable, increase the level of funds that would, in the absence of such Federal funds made available under this section, be made available from non-Federal sources, and in no case may such funds be used so as to supplant funds from non-Federal sources.

SEC. 355. PROGRAM REQUIREMENTS.

(a) REQUIREMENTS.—

(1) IN GENERAL.—Each State receiving a grant pursuant to section 354 shall conduct a parents as teachers program which—

(A) establishes and operates parent education programs including programs of developmental screening of children; and

(B) designates a lead State agency which shall—

(i) hire parent educators who have had supervised experience in the care and education of children;

(ii) establish the number of group meetings and home visits required to be provided each year for each participating family, with a minimum of 2 group meetings and 10 home visits for each participating family;

(iii) be responsible for administering the periodic screening of participating children's educational, hearing and visual development, using the Denver Developmental Test, Zimmerman Preschool Language Scale, or other approved screening instruments; and

(iv) develop recruitment and retention programs for hard-to-reach populations.

(2) LIMITATION.—Grant funds awarded under this part shall only be used for parents as teachers programs which serve families during the period of time beginning with birth and ending when a child attains the age of 3.

SEC. 356. SPECIAL RULES.

Notwithstanding any other provision of this section—

(1) no person, including home school parents, public school parents, or private school parents, shall be required to participate in any program of parent education or developmental screening pursuant to the provisions of this part;

(2) no parents as teachers program assisted under this part shall take any action that infringes in any manner on the right of parents to direct the education of their children; and

(3) the provisions of section 438(c) of the General Education Provisions Act shall apply to eligible entities awarded grants under this part.

SEC. 357. PARENTS AS TEACHERS NATIONAL CENTER.

The Secretary shall establish a Parents As Teachers National Center to disseminate information to, and provide technical and training assistance to, States establishing and operating parents as teachers programs.

SEC. 358. EVALUATIONS.

The Secretary shall complete an evaluation of the State parents as teachers programs assisted under this part within 4 years from the date of enactment of this Act, including an assessment of such programs' impact on at-risk children.

SEC. 359. APPLICATION.

Each State desiring a grant pursuant to the provisions of this part shall submit an application to the Secretary at such time, in such manner and accompanied by such information as the Secretary may reasonably require. Each such application shall describe the activities and services for which assistance is sought.

SEC. 360. PAYMENTS AND FEDERAL SHARE.

(a) PAYMENTS.—The Secretary shall pay to each State having an application approved under section 359 the Federal share of the cost of the activities described in the application.

(b) FEDERAL SHARE.—

(1) IN GENERAL.—The Federal share—

(A) for the first year for which a State receives assistance under this part shall be 100 percent;

(B) for the second such year shall be 100 percent;

(C) for the third such year shall be 75 percent;

(D) for the fourth such year shall be 50 percent; and

(E) for the fifth such year shall be 25 percent.

(2) NON-FEDERAL SHARE.—The non-Federal share of payments under this part may be in cash or in kind fairly evaluated, including planned equipment or services.

SEC. 360A. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated $10,000,000 for fiscal year 1993 and such sums as may be necessary for each of the fiscal years 1994 through 1997 to carry out this part.

PART H—MEDIA INSTRUCTION

SEC. 361. MEDIA INSTRUCTION.

(a) GRANTS AUTHORIZED.—The Assistant Secretary shall enter into a contract with an independent nonprofit organization described in subsection (b) for the establishment of a national multimedia television-based project directed to homes, schools and after-school programs that is designed to motivate and improve the reading comprehension and writing coherence of elementary school-age children.

(b) DEMONSTRATED EFFECTIVENESS.—The Assistant Secretary shall award the contract described in subsection (a) to an independent nonprofit organization that has demonstrated effectiveness in educational programming and development on a nationwide basis.

(c) AUTHORIZATION AND APPROPRIATIONS.—There are authorized to be appropriated $5,000,000 for fiscal year 1993 and such sums as may be necessary for fiscal year 1994 and fiscal year 1995 to carry out this section.

PART I—MIGRANT EDUCATION

SEC. 365. MIGRANT EDUCATION.

The first sentence of subsection (c) of section 1202 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 2782(c)) is amended by inserting ", except that notwithstanding any other provision of law, the definition of 'currently migratory child' shall be modified to include a child who resides in a school district of more than 15,000 square miles and who migrates at least 20 miles to a temporary residence to enable the child, the child's parent, or a member of the child's immediate family to engage in fishing activity".

PART J—HISTORY AND PRINCIPLES OF THE CONSTITUTION

SEC. 371. PROGRAM AUTHORIZED.

(a) GENERAL AUTHORITY.—

(1) ESTABLISHMENT.—The Secretary shall carry out a program to educate students about the history and principles of the Constitution of the United States, including the Bill of Rights, and to foster civic competence and civic responsibility.

(2) EDUCATIONAL ACTIVITIES.—The program required by paragraph (1) shall continue and expand the educational activities of the Chief Justice Warren E. Burger National Historical Map Contest sponsored by the Commission on the Bicentennial of the United States Constitution.

(3) CONTRACT.—The Secretary is authorized, through an open competition process, to contract with an independent nonprofit educational organization to carry out the program described in this section. Such organization shall have demonstrated experience and effectiveness in educating students about the history and principles of the Constitution of the United States.

(b) PROGRAM CONTENT.—The program authorized by this section shall provide—

(1) curricular materials required for students at upper elementary, middle, and secondary school levels to participate in the contest described in paragraph (2) of subsection (a); and

(2) for the conduct of the contest described in paragraph (2) of subsection (a) at upper elementary, middle, and secondary school levels at the congressional district, State, and national levels for schools wishing to participate in such program.

(c) PROGRAM PARTICIPANTS.—The program authorized by this section shall be made available to public and private elementary, middle, and secondary schools in the 435 congressional districts, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the District of Columbia.

(d) REPORT.—The Secretary shall report on a biennial basis, to the appropriate committees of the Congress on the distribution and use of funds authorized pursuant to the authority of subsection (e).

(e) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated $2,000,000 for the fiscal year 1993 and such sums as may be necessary for each of the fiscal years 1994 through 1997 and to carry out this section.

PART K—CLASSROOMS FOR THE FUTURE

SEC. 375. SHORT TITLE.

This part may be cited as the "Classrooms for the Future Act of 1992".

SEC. 376. PURPOSE.

It is the purpose of this part to establish a program to develop and expand the use of high quality curriculum-based learning resources using state-of-the-art technologies and techniques which are or can be designed to increase the achievement levels of students in subject areas including mathematics, science, geography, history and English.

SEC. 377. ACHIEVEMENT GRANTS.

(a) COMPETITIVE GRANTS.—

(1) IN GENERAL.—The Secretary shall award grants, on a competitive basis, to eligible consortia to enable such eligible consortia to develop instructional programs and technology-based systems for complete courses or units of study for a specific subject and grade level, if such programs and systems are commercially unavailable in the local area served by such eligible consortia.

(2) ELIGIBLE CONSORTIUM.—For the purpose of this section the term "eligible consortium" means a consortium consisting of—

(A) State or local educational agencies in partnership with businesses; and

(B) institutions of higher education or other public or private nonprofit organizations.

(b) PRIORITY.—In awarding grants under this section, the Secretary shall give priority to applications describing programs that are developed—

(1) so that the program may be adapted and applied nationally; and

(2) to raise the achievement levels of students, particularly disadvantaged students who are not realizing their potential.

(c) DURATION AND AMOUNT.—Each grant made under this section shall be awarded for a period not to exceed 3 years and in an amount not to exceed $3,000,000.

(d) APPLICATION.—

(1) IN GENERAL.—Each consortium desiring a grant under this section shall submit an application to the Secretary at such time, in such manner, and accompanied by such information as the Secretary may prescribe.

(2) CONTENTS.—Each application submitted pursuant to paragraph (1) shall include—

(A) a description of how the program shall improve the achievement levels of students; and

(B) an assurance that the program shall effectively serve a large number or percentage of economically disadvantaged students.

(e) CRITERIA FOR AWARDING GRANTS.—In awarding grants under this section to develop programs, the Secretary shall consider the appropriateness and quality of the following elements of the programs:

(1) Identification of specific learning objectives and strategies of the proposed course or unit of study.

(2) Incorporation in creative ways of a variety of technology-based learning resources such as computer software, databases, films, transparencies, video and audio discs, telecommunications (including educational radio and television), and print materials.

(3) Design that allows tailoring of the program to meet individual needs of students, particularly students at greatest risk of not reaching their educational potential.

(4) Flexibility of use by teachers or local schools.

(5) Methods for updating or revising information and material.

(6) Programs or materials to train and guide teachers.

(7) Coordination with teacher training programs.

(8) Explanatory materials for students and parents.

(9) Field testing and evaluation in terms of stated learning objectives.

(10) Plans for pricing technology-based materials that are affordable for public schools and agencies.

(11) Plans for distribution that ensure access for the poorest schools and school districts.

(12) Demonstration of cost-effectiveness in relation to existing programs and to achieving stated learning objectives.

SEC. 378. AUTHORIZATION OF FUNDS.

There are authorized to be appropriated $25,000,000 for the fiscal year 1993 and such sums as may be necessary for each of the fiscal years 1994 through 1997 to carry out this part.

PART L—BUDDY SYSTEM COMPUTER EDUCATION

SEC. 381. SHORT TITLE.

This part may be cited as the "Buddy System Computer Education Act".

SEC. 382. PURPOSE.

It is the purpose of this part to award demonstration grants to develop and expand public-private partnership programs which extend the learning experience, via computers, beyond the classroom environment in order to—

(1) enhance learning by providing students with the technological tools and guidance necessary to develop skills critical to educational growth and success in the workplace, including—

(A) mastery of fundamental computer technology and applications;

(B) improved written and visual communication skills;

(C) improved critical thinking and problem solving abilities; and

(D) improved ability to work in a collaborative, teamwork-driven environment;

(2) encourage parental involvement in education and total family use and understanding of computers and telecommunications through at-home applications; and

(3) establish foundations for life-long learning through improvement in education skills and student motivation and attitudes.

SEC. 383. GRANT AUTHORIZATION.

(a) GRANT PROGRAM.—

(1) IN GENERAL.—The Secretary shall conduct a program of awarding a grant to each of 3 States to enable such States to create a computer-based education project for children in grades 4 through 6 in accordance with the requirements of section 384.

(2) AWARD BASIS.—The Secretary shall award grants under this part on a competitive basis.

(3) PREFERENCE.—In awarding grants under this part, the Secretary shall give preference to applications—

(A) from States that have a demonstrated ability or commitment to computer-based technology education; and

(B) describing projects that serve school districts which serve a large number or percentage of economically disadvantaged students.

(b) SITE SELECTION AND PROJECT IMPLEMENTATION.—Site selection and implementation of the computer-based education projects assisted under this part shall take place not later than 9 months after funds are appropriated to carry out this part pursuant to the authority of section 389.

SEC. 384. PROGRAM REQUIREMENTS.

Each State receiving a grant to conduct a computer-based education project under this part shall—

(1) provide a continuous 3-year computer-based education project to 2 consecutive groups of 4th, 5th, and 6th grade elementary school students during the period commencing with each such group's entry into 4th grade and ending the summer following each such group's completion of 6th grade;

(2) ensure that each student in each of the classes participating in the project shall participate in the project;

(3) conduct such project in not more than 7 public elementary schools within the State; and

(4) ensure that each student participating in the project shall have access to a computer—

(A) at school during the school year; and

(B) at home during the school year and summer.

SEC. 385. APPLICATIONS.

(a) APPLICATION REQUIRED.—In order to receive a grant under this part, the chief State school officer of a State shall submit an application to the Secretary in such form and containing such information as the Secretary may reasonably require. Such application shall include an assurance from the State educational agency that the State educational agency has made every effort to match on a dollar-for-dollar basis from private or public sources the funds received under this part, except that no such application shall be penalized or denied assistance under this part on the basis of the failure to provide such matching funds.

(b) APPLICATION PERIOD.—States shall be eligible to submit applications for assistance under this part during a 3-month period determined by the Secretary.

SEC. 386. USE OF FUNDS.

Grant funds under this part shall be used to provide hardware and software components to all sites, and training for classroom teachers as well as parents, administrators and technical personnel.

SEC. 387. EVALUATION.

The Secretary shall evaluate the demonstration program assisted under this part and shall report to the Congress regarding the overall effectiveness of such program.

SEC. 388. DEFINITIONS.

For the purpose of this part, the term "State" means each of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau.

SEC. 389. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated $5,000,000 for fiscal year 1993, and such sums as may be necessary for each of the fiscal years 1994 through 1997 to carry out this part.

PART M—COMPENSATION

SEC. 391. COMPENSATION.

(a) POSITIONS AT LEVEL IV.—Section 5315 of title 5, United States Code, is amended by striking "Assistant Secretaries of Education (6)" and inserting in lieu thereof "Assistant Secretaries of Education (10)".

(b) POSITIONS AT LEVEL V.—Section 5316 of title 5, United States Code, is amended by striking "Additional Officers, Department of Education (4)".

(c) APPLICABILITY.—This section shall take effect on the first day of the first pay period that begins on or after the date of enactment of this Act.

PART N—STAR SCHOOLS

SEC. 395. STAR SCHOOLS.

Subsection (a) of section 908 of the Star Schools Assistance Act (20 U.S.C. 4085b(a)) is amended by striking "greater" and inserting "lesser".

TITLE IV—DEFINITIONS

SEC. 401. DEFINITIONS.

For the purpose of this Act—

(1) the term "elementary school" has the same meaning given to such term by section 1471(8) of the Elementary and Secondary Education Act of 1965;

(2) the term "field-initiated research" means research in which the topics and methods of study are generated by the investigators, not by the source of the research funding;

(3) the term "institution of higher education" has the same meaning given to such term by section 1201(a) of the Higher Education Act of 1965;

(4) the term "local educational agency" has the same meaning given to such term by section 1471(12) of the Elementary and Secondary Education Act of 1965;

(5) the term "secondary school" has the same meaning given to such term by section 1471(21) of the Elementary and Secondary Education Act of 1965;

(6) the term "Secretary" means the Secretary of Education; and

(7) the term "State educational agency" has the same meaning given such term by section 1471(23) of the Elementary and Secondary Education Act of 1965.

Mrs. KASSEBAUM. Mr. President, the Office of Educational Research and Improvement, also known as OERI, is the agency in the Department of Education which has the potential to make the most significant contribution to our educational system. The other offices in the Department primarily provide financial assistance to students and schools which amount to about 7–8 percent of all money spent on education in the United States.

While this money is spent on worthwhile programs such as chapter I, OERI is the office that supports the research and development which has the potential to enable our schools and teachers to reform and adapt to the continual changes in our society and the needs of students. OERI can make a difference in the classroom by disseminating research findings on effective education practices and providing technical assistance to teachers in translating that research into practice. However, the education research being funded by OERI is not having the impact on the Nation's schools that it could.

In attempting to remedy this in this bill, we have tried to make changes to OERI programs to improve the outreach and dissemination efforts and to ensure that OERI programs are truly serving the needs of schools and teachers.

Toward this end, we have created an Office of Dissemination in OERI to take what we know about effective education practice and deliver it to the frontline teachers who need it. We also tried to create more linkages among the many OERI components so that they work together and complement each other's efforts working toward the same goals.

I have recommended the creation of a multipurpose teacher research dissemination network which has the the potential to reach 50 percent of the Nation's teachers over the next 5 years. This program will put teachers in touch with new ideas and approaches to help them tackle the difficult problems of low student achievement, dropouts, and the increasing responsibilities being passed onto teachers in today's society.

The program is intended to improve communication among OERI components and among teachers within their own school and across the district. It will empower teachers with information about U.S. Department of Education resources available to them by improving dissemination of information about OERI services, products, and activities. Most importantly, it will foster teacher professionalization by encouraging teachers to become more active players in improving their craft, seeking outside assistance, and working with other teachers to share and train each other in successful practices and develop solutions to common problems.

We have streamlined OERI operations through creation of five directorates focusing on broad comprehensive research areas rather than many isolated issues.

The bill provides authority for the continuation of the State National Assessment of Educational Progress [NAEP] trial program. We also incorporated the recommendations of the National Council on Standards and Testing for starting a process by which broader questions of standards and testing can be addressed. I would emphasize, however, that I view this as the beginning of the testing discussion—not the end point.

If we are moving in the direction of developing national standards, we must have broad debate and consensus on what those standards should be. Teachers must have a major role in the development of the standards for they are the ones who will be implementing the standards by turning them into curricula and helping students to meet the standards.

As for the development of a national test or system of tests, many difficult questions deserving of broad public debate remain. I continue to believe it would be a mistake to rush headlong into some type of national test or system of tests. We must be satisfied that such assessment is worth the time, efforts, and money which would be involved. I firmly believe that the primary goal of any such tests should be to improve teaching and learning and inform teachers and students. The Federal role in this area should be one of informing the debate on assessment practices and supporting State and local efforts.

Overall, I believe that this bill has the potential to provide valuable research, guidance, and technical support for our Nation's schools and teachers as they work with our students to help them prepare for the future.

By Mr. AKAKA (for himself and Mr. INOUYE):

S. 287. A bill to amend the Employee Retirement Income Security Act of 1974 with respect to the preemption of the Hawaii Prepaid Health Act, and for other purposes; to the Committee on Labor and Human Resources.

HAWAII PREPAID HEALTH CARE EXEMPTION ACT

Mr. AKAKA. Mr. President, I rise today to reintroduce legislation to exclude the Hawaii Prepaid Health Care Act from the Employee Retirement Income Security Act of 1974 [ERISA]. Senator INOUYE has joined me in introducing this bill.

In recognition of Hawaii's determined effort to provide universal health care, my bill would exempt the State's Prepaid Health Care Act from restrictions contained in ERISA. Such an exemption would give Hawaii greater flexibility to improve both the quality and scope of health coverage to her working men and women and their families. It would also allow the State to address inconsistencies in its innovative approach to health care.

Hawaii had led the Nation in ensuring that basic health care is available to all its people. This system delivers high-quality care at relatively low cost, despite a cost of living that is 30 to 40 percent higher than the rest of the country.

The results of Hawaii's innovative approach is impressive. Of all the States, Hawaii is the closest to achieving universal health care coverage. Results of a State of Hawaii department of health survey indicate that 3.75 percent of Hawaii's residents lack health insurance. This compares with national estimates that between 14 and 17 percent of U.S. residents are not covered.

Mr. President, my State has achieved this unique status by building on the success of the Hawaii Prepaid Health Care Act of 1974, which forms the backbone of the system. There are two other components of this three-pronged approach. One is the State's Medicaid Program, which uses Federal and State funds to provide access to care for the medically and economically needy. The other part is the State Health Insurance Program [SHIP], which seeks to enroll the remaining gap group ineligible for either employer-provided coverage, Medicaid or other Federal programs.

Since 1974, Hawaii has had a mandated employer health benefits program, the first and only one of its kind in the United States. The Prepaid Health Care Act was enacted after many years of study and debate in an environment of already strong employment-based coverage. Nearly all of Hawaii's employers are required to provide employee health insurance, with the employee paying up to half the premium cost, but no more than 1.5 percent of monthly wages and the employer providing the balance. Dependent coverage is optional.

Eligible employees must work at least 20 hours a week. Employers may offer one or two basic plans—a fee-for-

service plan or a designated health maintenance organization plan.

Hawaii has also been expanding eligibility for Medicaid allowed under Federal options and recently implemented SHIP, its subsidized insurance program covering those left in the gap between employer-provided insurance and Medicaid.

Launched in April 1990, SHIP provides a State-subsidized, basic insurance plan to those in the gap group—mainly the unemployed; dependents of low-income workers, who are mostly children; and part-time workers unable to afford coverage. An estimated 30,000 to 35,000 individuals are in the gap group. To date, over 17,000 members have enrolled.

Mr. President, the road to universal health care coverage is often rocky, and the Federal Government has sometimes erected barriers rather than removed constraints to achieving maximum coverage. A case in point is the State's experience with the Hawaii Prepaid Health Care Act and ERISA.

In 1980, the Ninth Circuit Court of Appeals held that the preemption clause in ERISA prevented the State from enacting minimum health care requirements for employers governed by ERISA. The court determined that in the absence of an expressed exemption for the Hawaii statute, Federal law governs. The U.S. Supreme Court affirmed the lower court ruling, and concluded that relief could come only from Congress.

Soon thereafter, I sponsored legislation to grant an exemption for the Hawaii statute. After considerable congressional debate, a limited ERISA exemption was signed into law on January 14, 1983. However, the exemption was not prospective and only permitted the State to require the specific benefits set forth in its 1974 statute.

An unfortunate consequence is that the Hawaii Prepaid Health Care Act has been frozen in time, with no amendments or changes allowed other than those that would enhance effective administration.

Mr. President, there is an urgent need to bring the State statute up to date, inasmuch as 19 years have passed since its enactment. We need to allow a State that has been at the forefront of innovative approaches to health care to make changes which better reflect the needs of today's population and their employers. Hawaii should not have to resort to back-door approaches in order to ensure basic health care to its citizens. My legislation will permit the State to address these issues and upgrade its successful health care programs for the 1990's and beyond.

Today, Hawaii has one of the lowest infant mortality rates and one of the highest life expectancy rates in the Nation. Although the incidence of chronic diseases, such as cancer and heart disease is similar to that of other States, the death rates from these diseases are lower. The substantial investment Hawaii has made in the prepaid health care law has clearly paid off.

In recognition of Hawaii's need to make beneficial changes to its landmark health care statute, a provision expanding the existing ERISA exemption for Hawaii was included in the conference report on H.R. 11 in the 102d Congress.

Although we continue the quest for a long overdue national health care reform, we should not allow a dynamic State like Hawaii to remain hobbled by Federal limitations on a truly innovative program with a proven record of success.

Mr. President, I urge my colleagues to support this bill, and I ask unanimous consent that it be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 287

Be it enacted by the Senate and House Representatives of the United States of America in Congress assembled,

SECTION 1. PREEMPTION OF HAWAII PREPAID HEALTH CARE ACT.

Section 514(b)(5) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1144(b)(5)) is amended to read as follows:

"(5)(A) Except as provided in subparagraphs (B) and (C), subsection (a) shall not apply to the Hawaii Prepaid Health Care Act (Haw. Rev. Stat. §§393–1 through 393–51).

"(B) Nothing in subparagraph (A) shall be construed to exempt from subsection (a) any State tax law relating to employee benefits plans.

"(C) If the Secretary of Labor notifies the Governor of the State of Hawaii that as the result of an amendment to the Hawaii Prepaid Health Care Act enacted after the date of the enactment of this paragraph—

"(i) the proportion of the population with health care coverage under such Act is less than such proportion on such date, or

"(ii) the level of benefit coverage provided under such Act is less than the actuarial equivalent of such level of coverage on such date,

subparagraph (A) shall not apply with respect to the application of such amendment to such Act after the date of such notification.".

By Mr. DORGAN:

S. 288. A bill to amend the Internal Revenue Code of 1986 to provide a reduction in the capital gains tax on individuals, and for other purposes; to the Committee on Finance.

CAPITAL GAINS TAX FAIRNESS ACT OF 1993

Mr. DORGAN. Mr. President, the debate over capital gains in America today shows what is wrong with the economic thinking in this Nation, and why the middle class never seems to gain any ground.

For the past decade, a cadre of beltway pundits has turned capital gains into the poster child of the rich. They have painted a picture of investors sitting glumly in their Wall Street offices, so victimized and despondent over the lack of a capital gains tax loophole that they have lost all will to save and invest.

Of course, that picture is a product of ideological ax grinding. The rich are doing quite well in America today. Their tax rates are about half the level of the 1960's—a time when, let us not forget, the American economy was booming, despite the very high tax rates in the upper brackets.

The sad part of the maudlin handwringing over the rich, is that it has overshadowed a very real problem facing middle-income taxpayers. People of modest means who sell an occasional asset—a small family business, for example—often find the gain wiped out by taxes. These are not professional investors, nor tax shelter players. Rather, they are ordinary people who depend on some property for long-term savings and investment, only to find much of that savings wiped out by taxes and inflation.

That is why I am introducing today the Capital Gains Tax Fairness Act of 1993. This is tax relief for Main Street rather than Wall Street; it would deal with the capital gains problems that ordinary Americans, like family farmers and Main Street business owners, actually experience, as opposed to the kind of tax problems that the ideological ax grinders moan about. Under this bill, an individual taxpayer would get a special low-tax rate on up to $200,000 in capital gain income—not including stocks and bonds—over his or her lifetime. The House passed this proposal as part of the 1990 budget bill; it was later dropped in conference.

In addition, this bill would enable middle-income taxpayers to take a modest $1,000 in capital gains income each year, tax free. This exclusion would apply to publicly traded stock, among other assets; but it would be diminished for taxpayers who make over $150,000 a year. The $1,000 annual tax break would not count against the lifetime allowance of $200,000 in low-taxed gains.

What I am proposing today is an alternative to the kind of across-the-board capital gains loophole that the Bush administration was pushing to revive. This country cannot afford more tax breaks for the rich. The last thing our economy needs, moreover, is a return of the tax shelter industry, which was built on the old capital gains tax break, and which siphons off the Nation's productive energies into tax lawyering and accounting.

America will not return to prosperity through tax loopholes and accounting finagles. We need low rates for everyone, and simple laws, so that investors can respond to the market, rather than to the arcana of the Internal Revenue Code and to the whims of the IRS.

Capital gains tax relief should be a response to a real problem, and that is what my bill does. It would address a

real tax burden felt by middle-income Americans. They would be able to sell the family farm or business, or to cash in some stock to send the kids to college, without incurring an overbearing tax burden. They wouldn't have to watch their savings from modest, long-term investment disappear into the IRS. My approach is simple, and fair; and it would provide the middle-class some tax relief that they need and deserve.

I ask unanimous consent to include the full text of the bill into the RECORD following this statement.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 288

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; AMENDMENT OF 1986 CODE.

(a) SHORT TITLE.—This Act may be cited as the "Capital Gains Tax Fairness Act of 1993".

(b) AMENDMENT OF 1986 CODE.—Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Internal Revenue Code of 1986.

TITLE I—REDUCTION IN CAPITAL GAINS TAX FOR INDIVIDUALS

SEC. 101. REDUCTION IN CAPITAL GAINS TAX FOR INDIVIDUALS.

(a) GENERAL RULE.—Part I of subchapter P of chapter 1 (relating to treatment of capital gains) is amended by adding at the end thereof the following new section:

"SEC. 1202. CAPITAL GAINS DEDUCTION FOR INDIVIDUALS.

"(a) IN GENERAL.—In the case of an individual, there shall be allowed as a deduction for the taxable year an amount equal to the sum of—

"(1) the annual capital gains deduction (if any) determined under subsection (b), plus

"(2) the lifetime capital gains deduction for nontradable property (if any) determined under subsection (c).

"(b) ANNUAL CAPITAL GAINS DEDUCTION.—

"(1) IN GENERAL.—For purposes of subsection (a), the annual capital gains deduction determined under this subsection is the lesser of—

"(A) the net capital gain for the taxable year, or

"(B) $1,000.

"(2) PHASE-OUT FOR INCOMES BETWEEN $100,000 AND $150,000.—The $1,000 amount specified in subparagraph (B) of paragraph (1) shall be reduced by an amount which bears the same ratio to $1,000 as—

"(A) the adjusted gross income of the taxpayer for the taxable year in excess of $100,000, bears to, or

"(B) $50,000.

"(3) CERTAIN INDIVIDUALS NOT ELIGIBLE.—This subsection shall not apply to—

"(A) any taxpayer whose adjusted gross income for the taxable year exceeds $150,000, or

"(B) any individual with respect to whom a deduction under section 151 is allowable to another taxpayer for a taxable year beginning in the calendar year in which such individual's taxable year begins.

"(4) ANNUAL DEDUCTION NOT AVAILABLE FOR SALES TO RELATED PERSONS.—The amount of the net capital gain taken into account under paragraph (1)(A) shall not exceed the amount of the net capital gain determined by not taking into account gains and losses from sales and exchanges to any related person (within the meaning of section 267(b) or 707(b)(1)).

"(c) LIFETIME CAPITAL GAINS DEDUCTION FOR NONTRADABLE PROPERTY.—

"(1) IN GENERAL.—For purposes of subsection (a), the lifetime capital gains deduction for nontradable property determined under this subsection for any taxable year is 50 percent of the qualified gain for such taxable year.

"(2) LIMITATION.—

"(A) IN GENERAL.—The amount of the qualified gain taken into account under paragraph (1) for any taxable year shall not exceed $200,000 reduced by the aggregate amount of the qualified gain taken into account under this subsection by the taxpayer for prior taxable years.

"(B) SPECIAL RULE FOR JOINT RETURNS.—The amount of the qualified gain taken into account under this subsection on a joint return for any taxable year shall be allocated equally between the spouses for purposes of determining the limitation under subparagraph (A) for any succeeding taxable year.

"(3) QUALIFIED GAIN.—

"(A) IN GENERAL.—For purposes of paragraph (1), the term 'qualified gain' means the lesser of—

"(i) the net capital gain for the taxable year reduced by the annual capital gains deduction for such taxable year, or

"(ii) the net capital gain for the taxable year determined by only taking into account gains and losses from sales and exchanges on or after January 27, 1993, of qualified assets.

"(B) SPECIAL RULES.—

"(i) For purposes of subparagraph (A)(ii), any amount treated as a capital loss for the taxable year under section 1212 shall be treated as a loss from a sale or exchange on or after January 27, 1993, of a qualified asset.

"(ii) A taxpayer may elect for any taxable year not to take into account under this subsection all (or any portion) of the qualified gain for such taxable year. Such an election, once made, shall be irrevocable.

"(4) QUALIFIED ASSETS.—For purposes of this subsection, the term 'qualified assets' means any property other than—

"(A) stock or securities for which there is a market on an established securities market or otherwise, and

"(B) property (other than stock or securities) of a kind regularly traded on an established market.

"(5) SUBSECTION NOT TO APPLY TO CERTAIN INDIVIDUALS.—This subsection shall not apply to any individual who has not attained age 25 before the close of the taxable year.

"(d) SECTION NOT TO APPLY TO CERTAIN TAXPAYERS.—No deduction shall be allowed under this section to—

"(1) a married individual (within the meaning of section 7703) filing a separate return for the taxable year, or

"(2) an estate or trust.

"(e) SPECIAL RULES.—

"(1) TREATMENT OF CERTAIN SALES OF INTERESTS IN PARTNERSHIPS, ETC.—For purposes of subsection (c), any gain from the sale or exchange of a qualified asset which is an interest in a partnership, S corporation, or trust shall not be treated as gain from the sale or exchange of a qualified asset to the extent such gain is attributable to unrealized appreciation in the value of property described in subparagraph (A) or (B) of subsection (c)(4) which is held by such entity. Rules similar to the rules of section 751(f) shall apply for purposes of the preceding sentence.

"(2) DEDUCTION AVAILABLE ONLY FOR SALES OR EXCHANGES ON OR AFTER JANUARY 27, 1993.—The amount of the net capital gain taken into account under subsections (b)(1)(A) and (c)(3)(A)(i) shall not exceed the amount of the net capital gain determined by only taking into account gains and losses from sales and exchanges on or after January 27, 1993. For purposes of the preceding sentence, any amount treated as a capital loss for the taxable year under section 1212 shall be treated as a loss from a sale or exchange on or after January 27, 1993.

"(3) DETERMINATION OF ADJUSTED GROSS INCOME.—

"(A) IN GENERAL.—For purposes of subsection (b), adjusted gross income shall be determined—

"(i) without regard to the deduction allowed under this section, but

"(ii) after the application of sections 86, 135, 219, and 469.

"(B) COORDINATION WITH OTHER ADJUSTED GROSS INCOME LIMITATIONS.—For purposes of sections 86, 135, 219, and 469, adjusted gross income shall be determined without regard to the deduction allowed under this section.

"(4) SPECIAL RULE FOR PASS-THRU ENTITIES.—

"(A) IN GENERAL.—In applying this section with respect to any pass-thru entity—

"(i) the determination of when the sale or exchange occurs shall be made at the entity level, and

"(ii) any gain attributable to such entity shall in no event be treated as gain from sale or exchange of a qualified asset if interests in such entity are described in subparagraph (A) or (B) of subsection (c)(4).

"(B) PASS-THRU ENTITY DEFINED.—For purposes of subparagraph (A), the term 'pass-thru-entity' means—

"(i) a regulated investment company,

"(ii) a real estate investment trust,

"(iii) an S corporation,

"(iv) a partnership,

"(v) an estate or trust, and

"(vi) a common trust fund."

(b) TREATMENT OF COLLECTIBLES.—

(1) IN GENERAL.—Section 1222 is amended by inserting after paragraph (11) the following new paragraph:

"(12) SPECIAL RULE FOR COLLECTIBLES.—

"(A) IN GENERAL.—Any gain or loss from the sale or exchange of a collectible shall be treated as a short-term capital gain or loss (as the case may be), without regard to the period such asset was held. The preceding sentence shall apply only to the extent the gain or loss is taken into account in computing taxable income.

"(B) TREATMENT OF CERTAIN SALES OF INTERESTS IN PARTNERSHIPS, ETC.—For purposes of subparagraph (A), any gain from the sale or exchange of an interest in a partnership, S corporation, or trust which is attributable to unrealized appreciation in the value of collectibles held by such entity shall be treated as gain from the sale or exchange of a collectible. Rules similar to the rules of section 751(f) shall apply for purposes of the preceding sentence.

"(C) COLLECTIBLE.—For purposes of this paragraph, the term 'collectible' means any capital asset which is a collectible (as defined in section 408(m) without regard to paragraph (3) thereof)."

(2) CHARITABLE DEDUCTION NOT AFFECTED.—

(A) Paragraph (1) of section 170(e) is amended by adding at the end thereof the following new sentence: "For purposes of

this paragraph, section 1222 shall be applied without regard to paragraph (12) thereof (relating to special rule for collectibles)."

(B) Clause (iv) of section 170(b)(1)(C) is amended by inserting before the period at the end thereof the following: "and section 1222 shall be applied without regard to paragraph (12) thereof (relating to special rule for collectibles)".

(c) MINIMUM TAX.—Paragraph (1) of section 56(b) is amended by adding at the end thereof the following new subparagraph:

"(G) CAPITAL GAINS DEDUCTION NOT ALLOWED.—The deduction under section 1202 shall not be allowed."

(d) COORDINATION WITH MAXIMUM CAPITAL GAINS RATE.—Subsection (h) of section 1 (relating to maximum capital gains rate) is amended to read as follows:

"(h) MAXIMUM CAPITAL GAINS RATE.—

"(1) IN GENERAL.—If a taxpayer has a net capital gain for any taxable year, then the tax imposed by this section shall not exceed the sum of—

"(A) a tax computed at the rates and in the same manner as if this subsection had not been enacted on the greater of—

"(i) taxable income reduced by the amount of the net capital gain, or

"(ii) the amount of taxable income taxed at a rate below 28 percent, plus

"(B) a tax of 28 percent of the amount of taxable income in excess of the amount determined under subparagraph (A).

"(2) COORDINATION WITH SECTION 1202 DEDUCTION.—For purposes of paragraph (1), the amount of the net capital gain shall be reduced by the sum of—

"(A) the amount allowable as a deduction under section 1202(a)(1), plus

"(B) the amount of the qualified gain (as defined in section 1202(c)) for the taxable year to the extent taken into account under section 1202(c)(1) for the taxable year."

(e) CONFORMING AMENDMENTS.—

(1) Subsection (a) of section 62 is amended by inserting after paragraph (14) the following new paragraph:

"(15) CAPITAL GAINS DEDUCTION.—The deduction allowed by section 1202."

(2) Clause (ii) of section 163(d)(4)(B) is amended by inserting ", reduced by the amount of any deduction allowable under section 1202 attributable to gain from such property" after "investment".

(3)(A) Paragraph (2) of section 172(d) is amended to read as follows:

"(2) CAPITAL GAINS AND LOSSES OF TAXPAYERS OTHER THAN CORPORATIONS.—In the case of a taxpayer other than a corporation—

"(A) the amount deductible on account of losses from sales or exchanges of capital assets shall not exceed the amount includible on account of gains from sales or exchanges of capital assets; and

"(B) the deduction provided by section 1202 shall not be allowed."

(B) Subparagraph (B) of section 172(d)(4) is amended by inserting ", (2)(B)," after "paragraph (1)".

(4)(A) Section 220 (relating to cross reference) is amended to read as follows:

"SEC. 220. CROSS REFERENCES.

"(1) For deduction for net capital gains in the case of a taxpayer other than a corporation, see section 1202.

"(2) For deductions in respect of a decedent, see section 691."

(B) The table of sections for part VII of subchapter B of chapter 1 is amended by striking "reference" in the item relating to section 220 and inserting "references".

(5) Paragraph (4) of section 691(c) is amended by striking "1201, and 1211" and inserting "1201, 1202, and 1211".

(6) The second sentence of paragraph (2) of section 871(a) is amended by inserting "such gains and losses shall be determined without regard to section 1202 (relating to deduction for net capital gain) and" after "except that".

(7) Paragraph (1) of section 1402(i) is amended to read as follows:

"(1) IN GENERAL.—In determining the net earnings from self-employment of any options dealer or commodities dealer—

"(A) notwithstanding subsection (a)(3)(A), there shall not be excluded any gain or loss (in the normal course of the taxpayer's activity of dealing in or trading section 1256 contracts) from section 1256 contracts or property related to such contracts, and

"(B) the deduction provided by section 1202 shall not apply."

(f) CLERICAL AMENDMENT.—The table of sections for part I of subchapter P of chapter 1 is amended by adding at the end thereof the following new item:

"Sec. 1202. Capital gains deduction for individuals."

(g) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply to taxable years ending on or after January 27, 1993.

(2) TREATMENT OF COLLECTIBLES.—The amendments made by subsection (b) shall apply to dispositions on or after January 27, 1993.

(3) COORDINATION WITH PRIOR TRANSITION RULE.—Any amount treated as long-term capital gain by reason of paragraph (3) or (4) of section 1122(h) of the Tax Reform Act of 1986 shall not be taken into account for purposes of applying section 1202 of the Internal Revenue Code of 1986 (as added by this section).

TITLE II—DEPRECIATION RECAPTURE

SEC. 201. RECAPTURE UNDER SECTION 1250 OF TOTAL AMOUNT OF DEPRECIATION.

(a) GENERAL RULE.—Subsections (a) and (b) of section 1250 (relating to gain from disposition of certain depreciable realty) are amended to read as follows:

"(a) GENERAL RULE.—Except as otherwise provided in this section, if section 1250 property is disposed of, the lesser of—

"(1) the depreciation adjustments in respect of such property, or

"(2) the excess of—

"(A) the amount realized (or, in the case of a disposition other than a sale, exchange, or involuntary conversion, the fair market value of such property), over

"(B) the adjusted basis of such property,

shall be treated as gain which is ordinary income. Such gain shall be recognized notwithstanding any other provision of this subtitle.

"(b) DEPRECIATION ADJUSTMENTS.—For purposes of this section, the term 'depreciation adjustments' means, in respect of any property, all adjustments attributable to periods after December 31, 1963, reflected in the adjusted basis of such property on account of deductions (whether in respect of the same or other property) allowed or allowable to the taxpayer or to any other person for exhaustion, wear and tear, obsolescence, or amortization (other than amortization under section 169, 185 (as in effect before its repeal by the Tax Reform Act of 1986), 188 (as in effect before its repeal by the Revenue Reconciliation Act of 1990), 190, or 193). For purposes of the preceding sentence, if the taxpayer can establish by adequate records or other sufficient evidence that the amount allowed as a deduction for any period was less than the amount allowable, the amount taken into account for such period shall be the amount allowed."

(b) LIMITATION IN CASE OF INSTALLMENT SALES.—Subsection (i) of section 453 is amended—

(1) by striking "1250" the first place it appears and inserting "1250 (as in effect on the day before the date of the enactment of the Capital Gains Tax Fairness Act of 1993)", and

(2) by striking "1250" the second place it appears and inserting "1250 (as so in effect)".

(c) CONFORMING AMENDMENTS.—

(1) Subparagraph (E) of section 1250(d)(4) is amended—

(A) by striking "additional depreciation" and inserting "amount of the depreciation adjustments", and

(B) by striking "ADDITIONAL DEPRECIATION" in the subparagraph heading and inserting "DEPRECIATION ADJUSTMENTS".

(2) Subparagraph (B) of section 1250(d)(6) is amended to read as follows:

"(B) DEPRECIATION ADJUSTMENTS.—In respect of any property described in subparagraph (A), the amount of the depreciation adjustments attributable to periods before the distribution by the partnership shall be—

"(i) the amount of gain to which subsection (a) would have applied if such property had been sold by the partnership immediately before the distribution at its fair market value at such time, reduced by

"(ii) the amount of such gain to which section 751(b) applied."

(3) Subsection (d) of section 1250 is amended by striking paragraph (10).

(4) Section 1250 is amended by striking subsections (e) and (f) and by redesignating subsections (g) and (h) as subsections (e) and (f), respectively.

(5) Paragraph (4) of section 50(c) is amended to read as follows:

"(4) RECAPTURE OF REDUCTION.—For purposes of sections 1245 and 1250, any reduction under this subsection shall be treated as a deduction allowed for depreciation."

(6) Clause (i) of section 267(e)(5)(D) is amended by striking "section 1250(a)(1)(B)" and inserting "section 1250(a)(1)(B) (as in effect on the day before the date of the enactment of the Capital Gains Tax Fairness Act of 1993)".

(7)(A) Subsection (a) of section 291 is amended by striking paragraph (1) and by redesignating paragraphs (2), (3), (4), and (5) as paragraphs (1), (2), (3), and (4), respectively.

(B) Subsection (c) of section 291 is amended to read as follows:

"(c) SPECIAL RULE FOR POLLUTION CONTROL FACILITIES.—Section 168 shall apply with respect to that portion of the basis of any property not taken into account under section 169 by reason of subsection (a)(4)."

(C) Section 291 is amended by striking subsection (d) and redesignating subsection (e) as subsection (d).

(D) Paragraph (2) of section 291(d) (as redesignated by subparagraph (C)) is hereby repealed.

(E) Subparagraph (A) of section 265(b)(3) is amended by striking "291(e)(1)(B)" and inserting "291(d)(1)(B)".

(F) Subsection (c) of section 1277 is amended by striking "291(e)(1)(B)(ii)" and inserting "291(d)(1)(B)(ii)".

(8) Subsection (d) of section 1017 is amended to read as follows:

"(d) RECAPTURE OF DEDUCTIONS.—For purposes of sections 1245 and 1250—

"(1) any property the basis of which is reduced under this section and which is neither section 1245 property nor section 1250 property shall be treated as section 1245 property, and

"(2) any reduction under this section shall be treated as a deduction allowed for depreciation."

(9) Paragraph (5) of section 7701(e) is amended by striking "(relating to low-income housing)" and inserting "(as in effect on the day before the date of the enactment of the Capital Gains Tax Fairness Act of 1993)".

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to dispositions made on or after January 27, 1993, in taxable years ending on or after such date.

By Mr. REID (for himself, Mr. PRYOR, Mr. DANFORTH, Mr. KEMPTHORNE, Mr. LUGAR, Mr. MCCAIN, Mr. WARNER, Mr. BRYAN, Mr. COHEN, and Mr. GRAHAM):

S. 289. A bill to amend section 118 of the Internal Revenue Code of 1986 to provide for certain exceptions from rules for determining contributions in aid of construction, and for other purposes; to the Committee on Finance.

CONTRIBUTIONS IN AID OF CONSTRUCTION ACT

Mr. REID. Mr. President, today I, along with Senators PRYOR and DANFORTH, are reintroducing legislation to reinstate the exclusion from gross income of contributions in aid of construction—known as contributions or CIAC—to a water or wastewater utility. Joining us as original cosponsors are Senators KEMPTHORNE, LUGAR, MCCAIN, WARNER, BRYAN, COHEN, and GRAHAM.

Mr. President, this legislation passed in amendment form in the Senate on two occasions last year. Once during consideration of H.R. 4210, and again during consideration of H.R. 11.

In order to understand the economic and environmental effects of the CIAC tax, it is necessary to explain what a contribution is in the context of this legislation. Utilities are capital intensive industries. Historically, they have received the capital for the construction of a utility extension directly from new customers, typically a developer. The customer contributes this property, or a cash equivalent, to the utility. In this way, existing customers will not face rate increases every time the utility gains new customers.

Prior to enactment of the Tax Reform Act of 1986, CIAC were not included in the gross income of an investor-owned utility and therefore were not subject to Federal income tax. In addition, utilities could not earn, take tax depreciation or investment tax credits on CIAC.

The 1986 act repealed section 118(b) of the Internal Revenue Code and thus subjected CIAC to tax as gross income. As we all remember, the 1986 act had two basic premises as its core. One, the tax base would be broadened and rates would be lowered. Two, cuts in individual rates would be offset by increases in the corporate tax burden. Clearly the authors of the 1986 act intended to ensure that the burden of corporate taxes was spread to all industries including utilities.

The removal of the exclusion from gross income of CIAC was intended as a tax on utilities. In practice, the CIAC tax is not a tax on utilities, but a tax on utility customers, primarily developers and home buyers.

State utility regulatory bodies, often referred to as PUC's, generally require utilities to pass tax costs onto their customers. This means utility customers must make a larger contribution in order to cover a utility's tax costs. This is done in 1 of 2 ways. The most common approach is to require the new customer to pay the cost of the tax. But this is not a simple dollar for dollar charge. In order for a utility to be made whole, it must pay tax on the CIAC, plus a tax on the tax. This phenomenon is known as a gross-up. Depending on the State, a gross-up can add as much as 70 percent to the customer's cost of the contribution. In other words, a contribution of water mains valued at $100,000 would cost a customer $170,000.

Alternatively, the PUC may allow the utility to recover the tax cost from existing customers. Not only does this defeat the purpose of a contribution, it also means a rate increase. And with many water utilities seeking rate increases of as much as 25 percent in order to pay for Safe Drinking Water Act requirements, additional rate increases can lead to calls for condemnation.

Whichever method is chosen, utilities do not pay the tax, they pass it on. But passing the tax on has detrimental effects, not only on the utility's ability to bring in new business, but on the environment and—most significantly—on the price of new housing and housing construction.

Any developer faced with a large gross-up will have to evaluate its effect on the bottom line. Depending on conditions in the local housing market, a developer will ultimately pass the cost of the CIAC and the gross-up on to the new home buyer. The National Assocation of Home Builders has estimated that the CIAC tax can increase the cost of new housing by as much as $2,000 a unit. This additional cost is enough to end the dream of home ownership for a young couple.

The CIAC tax also has some important environmental effects. New customers can avoid paying the CIAC tax by building their own independent water systems. This leads to a proliferation of systems that may not have the financial, technical, or managerial ability to comply with the rigorous requirements of the Safe Drinking Water Act. Such systems are referred to as nonviable. According to EPA, in fiscal year 1990, more than 90 percent of the violations of the Safe Drinking Water Act were made by systems serving less than 3,300 individuals. By encouraging the proliferation of nonviable systems, the CIAC tax frustrates the environmental policy goal of consolidating these systems into already existing, professionally managed systems.

Mr. President, section 118(b) of the Internal Revenue Code, exempting contributions in aid of construction from gross income, should be restored. It is a tax on capital not income. It is not a tax on utilities, it is a tax on their customers. The CIAC tax increases the price of new homes, leads to the development of environmentally unsound water and sewage facilities and reduces the tax base for all levels of government.

Most important in my opinion, elimination of the CIAC tax will help get the real estate market back on its feet. Not by fueling real estate speculation, but by removing another barrier to the purchase of a new home. Anyone who has bought a house recently knows you just don't pay the price of the house. You pay closing costs, title costs, title insurance fees, attorneys' fees, and points. And when you buy a house hooked up to privately owned utilities, you also pay the CIAC tax—as much as $2,000 a unit.

This legislation was most recently estimated to cost $106 million over 5 years. I have included a revenue offset in the bill as introduced that raises $140 million over the same period, thus netting $34 million for the Federal Government. The offset extends depreciation on new water utility plants from 20 to 25 years and switches from 150 percent declining balance to straight line depreciation. This offset was suggested by the investor-owned water industry and is indivisible from the substance of the legislation which is the restoration of the exclusion of CIAC from gross income. The industry suggested it only for the purpose of repealing the CIAC tax, and that is its only intended use.

Mr. President, repeal of the tax on CIAC for water and wastewater utilities will have a noticeable effect on both housing prices and environmental policy. It is supported by both the National Association of Water Companies and the National Association of Regulatory Utility Commissioners. I urge my colleagues to cosponsor this important legislation.

I ask unanimous consent that the text of the bill follow my statement in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 289

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. TREATMENT OF CONTRIBUTIONS IN AID OF CONSTRUCTION.

(a) TREATMENT OF CONTRIBUTIONS IN AID OF CONSTRUCTION.—

(1) IN GENERAL.—Section 118 of the Internal Revenue Code of 1986 (relating to contributions to the capital of a corporation) is amended—

(A) by redesignating subsection (c) as subsection (e), and

(B) by inserting after subsection (b) the following new subsections:

"(c) SPECIAL RULES FOR WATER AND SEWAGE DISPOSAL UTILITIES.—

"(1) GENERAL RULE.—For purposes of this section, the term 'contribution to the capital of the taxpayer' includes any amount of money or other property received from any person (whether or not a shareholder) by a regulated public utility which provides water or sewerage disposal services if—

"(A) such amount is a contribution in aid of construction,

"(B) in the case of contribution of property other than water or sewerage disposal facilities, such amount meets the requirements of the expenditure rule of paragraph (2), and

"(C) such amount (or any property acquired or constructed with such amount) is not included in the taxpayer's rate base for ratemaking purposes.

"(2) EXPENDITURE RULE.—An amount meets the requirements of this paragraph if—

"(A) an amount equal to such amount is expended for the acquisition or construction of tangible property described in section 1231(b)—

"(i) which is the property for which the contribution was made or is of the same type as such property, and

"(ii) which is used predominantly in the trade or business of furnishing water or sewerage disposal services,

"(B) the expenditure referred to in subparagraph (A) occurs before the end of the second taxable year after the year in which such amount was received, and

"(C) accurate records are kept of the amounts contributed and expenditures made, the expenditures to which contributions are allocated, and the year in which the contributions and expenditures are received and made.

"(3) DEFINITIONS.—For purposes of this subsection—

"(A) CONTRIBUTION IN AID OF CONSTRUCTION.—The term 'contribution in aid of construction' shall be defined by regulations prescribed by the Secretary, except that such term shall not include amounts paid as service charges for starting or stopping services.

"(B) PREDOMINANTLY.—The term 'predominantly' means 80 percent or more.

"(C) REGULATED PUBLIC UTILITY.—The term 'regulated public utility' has the meaning given such term by section 7701(a)(33), except that such term shall not include any utility which is not required to provide water or sewerage disposal services to members of the general public in its service area.

"(4) DISALLOWANCE OF DEDUCTIONS AND INVESTMENT CREDIT; ADJUSTED BASIS.—Notwithstanding any other provision of this subtitle, no deduction or credit shall be allowed for, or by reason of, any expenditure which constitutes a contribution in aid of construction to which this subsection applies. The adjusted basis of any property acquired with contributions in aid of construction to which this subsection applies shall be zero.

"(d) STATUTE OF LIMITATIONS.—If the taxpayer for any taxable year treats an amount as a contribution to the capital of the taxpayer described in subsection (c), then—

"(1) the statutory period for the assessment of any deficiency attributable to any part of such amount shall not expire before the expiration of 3 years from the date the Secretary is notified by the taxpayer (in such manner as the Secretary may prescribe) of—

"(A) the amount of the expenditure referred to in subparagraph (A) of subsection (c)(2),

"(B) the taxpayer's intention not to make the expenditures referred to in such subparagraph, or

"(C) a failure to make such expenditure within the period described in subparagraph (B) of subsection (c)(2); and

"(2) such deficiency may be assessed before the expiration of such 3-year period notwithstanding the provisions of any other law or rule of law which would otherwise prevent such assessment."

(2) CONFORMING AMENDMENT.—Section 118(b) of such Code is amended by inserting "except as provided in subsection (c)," before "the term".

(3) EFFECTIVE DATE.—The amendments made by this subsection shall apply to amounts received after the date of the enactment of this Act.

(b) RECOVERY METHOD AND PERIOD FOR WATER UTILITY PROPERTY.—

(1) REQUIREMENT TO USE STRAIGHT LINE METHOD.—Section 168(b)(3) of the Internal Revenue Code of 1986 is amended by adding at the end the following new subparagraph:

"(F) Water utility property described in subsection (e)(5)."

(2) 25-YEAR RECOVERY PERIOD.—The table contained in section 168(c)(1) of such Code is amended by inserting the following item after the item relating to 20-year property:

"Water utility property .... 25 years".

(3) WATER UTILITY PROPERTY.—

(A) IN GENERAL.—Section 168(e) of such Code is amended by adding at the end the following new paragraph:

"(5) WATER UTILITY PROPERTY.—The term 'water utility property' means property—

"(A) which is an integral part of the gathering, treatment, or commercial distribution of water, and

"(B) which, without regard to this paragraph, would be 20-year property."

(B) CONFORMING AMENDMENT.—Subparagraph (F) of section 168(e)(3) of such Code is amended by adding at the end the following new sentence: "Such term does not include water utility property."

(4) ALTERNATIVE SYSTEM.—Clause (iv) of section 168(g)(2)(C) of such Code is amended by inserting ", water utility property," after "grading".

(5) EFFECTIVE DATE.—The amendments made by this subsection shall apply to property placed in service after the date of the enactment of this Act, other than property placed in service pursuant to a binding contract in effect on such date and at all times thereafter before the property is placed in service.

By Mr. MACK:

S. 290. A bill to provide for the cancellation of all existing leases and to ban all new leasing activities under the Outer Continental Shelf Lands Act in the area off the coast of Florida, and for other purposes; to the Committee on Energy and Natural Resources.

FLORIDA COASTAL PROTECTION ACT

• Mr. MACK. Mr. President, during the past election year, two of the issues that have been the focus of much debate and concern were: the state of our economy; and the condition of our environment. These two issues are usually found at opposite ends of any conversation for they are often seen as being competing concerns. But this need not be the case. My State provides an excellent example, since probably more so than most States, Florida's environment is a fragile one. Its beauty is a constant reminder that a sound environment and a sound economy go hand in hand.

For Florida, the beauty of the environment plays a key role in the economy. A clean environment is not only desirable, but also necessary for a strong economy. In fact, the economic health of the people of the State of Florida depends significantly upon the coastline and the waters surrounding our State. The pristine beaches of Florida are the primary attraction to the millions of tourists who fuel our economy, and provide our State with its single greatest source of revenue. Our waters support vast commercial and recreational fishing industries, which together generate more than $1.6 billion annually. These are in addition to popular recreational boating activities that also capitalize upon our valuable water resources.

On the environmental side, the area off the southwest coast of Florida is one of the most environmentally sensitive coastal habitats in the continental United States. The only living coral reef in the continental United States lines the east coast of the Florida Keys. In addition to providing life support for more than 400 species of fish, coral reefs of this size take hundreds of years to form and if left undisturbed, can create new islands such as the Keys.

Some of our country's greatest national treasures are located in southwest Florida, including the Everglades National Park, Crocodile Lake, and Great White Heron and Key West National Wildlife Refuges. The Florida Everglades are lined with mangroves which, besides acting as a natural filtration system between water and land, also provide shallow, sheltered nutrient-rich water for marine life. The State of Florida and the National Government have allocated substantial amounts of money toward rebuilding the environment of our State in these various areas. They are a source of national pride not only for their beauty, but also because of the international admiration they inspire. The United Nations has designated the Everglades National Park and Dry Tortugas ecosystem as an international biosphere reserve.

Despite the pride that all Floridians share in having these treasures located in our own backyards, my aim in speaking here today is not simply to praise the beauty of our State. Rather, I am compelled to take action now to ensure its environmental safety before it is too late. I am very concerned over what an oilspill would do to the ecology, economy, and beauty of Florida. I have always said that I believe drilling should not be allowed off the coast of

Florida in the absence of conclusive evidence that environmental damage will not occur. This evidence is not forthcoming. In fact, after reviewing the latest information on offshore oil drilling, and making recent trips to the Everglades and Keys, I am even more convinced that offshore drilling will always present an unacceptable risk to the economy and environment of Florida.

One danger outlined by the President's Leasing and Development Task Force back in 1989, but only fully appreciated now, is the impact that a major hurricane would have on oil drilling operations off the coast of Florida. Not only do hurricanes increase the likelihood of oilspills from platforms and tankers, but they also raise serious questions about emergency preparedness. Two days after the worst national disaster in our Nation's history—Hurricane Andrew—I was in south Florida with President Bush to survey the incredible damage. As local, State, and national authorities responded to the emergency, and labored under seriously limited conditions, it became clear to me that there would be no way to simultaneously handle an oilspill. In fact, based upon what I saw, it would have been weeks before an effective cleanup could have begun. Added to these very real limitations, is the fact that, according to the task force, "There is no proven environmentally sound way to remove oil from sandy beaches or mangrove roots." Thankfully, Florida was spared an oil related accident this time; next time we may not be so lucky.

All of this raises the question of: What is to be done? When the Presidential task force visited Florida, the cancellation of all future leasing was essentially the only option expressed by the vast majority of individuals at the four workshops in Florida and through written comments. In addition, many expressed the view that all existing permits for exploration from previous lease sales be revoked and leases repurchased so as to exclude any oil and gas development activities.

Much more than anyone else, Floridians know the value of our scenic coast. We also know how much our livelihoods are closely linked to the economic value of our shoreline and fisheries. Florida's coast belongs to Floridians and its use should be determined by Floridians. The Federal Government should not impose the huge risk of an oilspill on Florida's pristine coast against the will of Floridians. Over the past several years, I have traveled from the panhandle of Florida to the Florida Keys many times. Throughout these journeys, the people of Florida told me that they do not want drilling off their coast.

What is good for Florida's environment is also best for its economy. The threat of disaster far outweighs the benefits of offshore drilling activities in both environmental and economic terms. It is easy to understand and picture the environmental damage an oilspill might bring, but the economic consequences would be staggering. Oilslicked beaches wouldn't be much of a tourist attraction.

The protection of Florida's coastline is a priority issue. If anyone should decide the fate of Florida's coastline, Floridians should, and the Floridians I've talked to have said "no" to offshore oil drilling. Therefore, tonight I am introducing a bill to ban all leasing and drilling activities off of the Florida coast and cancel all existing leases currently held there. The decision by the Department of Commerce to allow the Department of the Interior to issue a permit for drilling just 29 miles off of the coast of the panhandle of Florida underscores the urgency of this legislation. It is my hope to work with the new administration to make the dream of protecting the Florida coastline from offshore drilling a reality.•

By Mr. MURKOWSKI:

S. 291. A bill to amend the Alaska National Interest Lands Conservation Act to improve the management of Glacier Bay National Park, and for other purposes; to the Committee on Energy and Natural Resources.

GLACIER BAY NATIONAL PARKS MANAGEMENT ACT

• Mr. MURKOWSKI. Mr. President, I am today reintroducing my bill to allow continued commercial and subsistence fishing in Glacier Bay National Park. This bill was heard by the members of the Committee on Energy and Natural Resources last year, and was reported out of that committee by an overwhelming margin. Because I am today offering precisely the same version, I hope that we can anticipate rapid action on it.

Let me emphasize that this bill will not—not in any way—affect the essentially wild and untouched nature of Glacier Bay National Park. For well over 100 years commercial fishermen have plied the waters now encompassed by the park, and for many thousands of years, local villagers have engaged in subsistence fishing and gathering there. At no time have these activities damaged the park or its resources, nor have they harmed the area's wild and scenic qualities.

Mr. President, this simple fact cannot be overemphasized: Commercial fishermen and local villagers have continually fished in Glacier Bay since long before it became a park or a monument, and the fact that we value it so highly today is proof that they have not had an adverse impact on the species of the bay.

SUBSISTENCE

It is no secret that Park Service personnel have attempted to discourage subsistence uses within the park, even before that became the Service's policy. Attempts to discourage local residents from using the park date back at least into the 1950's, according to research by the Alaska Department of Fish and Game.

Now, in response to a lawsuit filed by radical groups with no conception of the human realities involved, the Service has decided it must take formal steps against this stable, small-scale activity, as well as against the equally stable level of commercial fishing. The only use that is not being challenged is sport fishing—the one type of fishing that is currently undergoing rapid growth.

Furthermore, there is no clear basis for a subsistence prohibition. In fact, there are numerous passages in the Alaska National Interest Lands Conservation Act [ANILCA] which indicate that its purpose was in part to ensure the continuation of subsistence.

For example, section 802(1) of ANILCA states that the "utilization of the public lands in Alaska is to cause the least adverse impact possible on rural residents who depend upon subsistence uses of the resources of such lands." Section 203 states that: "Subsistence uses by local residents shall be allowed in national preserves and, where specifically permitted by this act, in national monuments and parks." And section 816 of ANILCA, entitled, "Closure to Subsistence Uses," closes parks like Glacier Bay National Park only to the taking of wildlife, not fish and other marine resources.

Although ANILCA is intended to protect the rights of rural residents, the current Park Service interpretation of ANILCA denies these rights to rural residents in the Glacier Bay area. Subsistence fishing and gathering, which are vital to these communities, must be permitted. My bill will correct the inconsistencies in the Alaska National Interest Lands Conservation Act [ANILCA] concerning subsistence fishing and gathering in Glacier Bay National Park.

If this new policy is allowed to stand unchallenged, villagers living near Glacier Bay will no longer be able to use the bay to feed their families—to fish for halibut, salmon, and crabs, and collect clams, seaweeds, berries, and other foods that are traditional in their cultures. And let me emphasize that we are talking about a relative handful of families from the local village of Hoonah, which has a population of less than 900, and a few people from other nearby communities such as Yakutat, Elfin Cove, Gustavus, and Pelican.

We are not talking about thousands of people. These Alaskans live miles from the nearest supermarkets. They rely on the land and marine waters for their food—they catch fish, they kill game, and they collect berries and marine life. This is subsistence hunting, fishing, and gathering.

Hoonah residents subsistence fish for salmon in the waters of the bay and outside the bay in the Gulf of Alaska. They collect seaweeds and crabs and other intertidal animals—all foods that have economic and cultural significance in this small Alaska village.

For countless generations—as long as 9,000 years—the ancestors of today's residents have been using Glacier Bay for subsistence. Indeed, the ancestors of today's residents actually lived in the bay until the last great glacial advance, and reestablished summer residences there after the ice had retreated.

As the overriding purpose of ANILCA's subsistence provisions clearly intends to prevent, these people should not be barred from their history.

COMMERCIAL FISHING

My bill also addresses commercial fishing in the park. For generations, commercial fishermen have caught salmon, halibut, and crabs in Glacier Bay and have fished the rich grounds in the outside waters of the park.

The history of commercial fishing there began before the turn of the century. In fact, one of the first great salmon salteries in Alaska, built to produce fish which were sent on sailing ships to San Francisco, and then around the Nation, was built inside what is now a park.

There is no biological reason for restricting commercial fishing activity in the park. The fishery resources are healthy, diverse, and closely monitored. It should also be noted that of the park's approximately 3 million acres of marine waters, only about 500,000 are productive enough to warrant significant interest.

These fisheries already are restricted as to method and number of participants, and are carefully managed to ensure continued abundance. There is nothing in this bill, and there is no desire by the fishing industry, to move the level and type of activity that has been in place for many years. Closely monitored by the State of Alaska, which has proven itself a reliable custodian of the fisheries resources, these forms of commercial fishing do not harm the environment in any way.

Furthermore, the park provides invaluable refuge for trollers fishing the outside coast in times of rough weather.

This bill creates no new fisheries and expands no existing fisheries. In addition, it requires a thorough study of the effects that even the current small fisheries may have on the park. It is strongly supported not only by fishermen and subsistence users, but also by the local Alaska environmental community.

Mr. President, in the grand scheme of this Nation's economy, these fisheries are small potatoes. But to the fishermen who depend upon them, to their families, and to the small remote communities in which they live, these fisheries are of utmost importance. They are harm free, and they do not deserve to be crushed by the Government behemoth.

I look forward to my colleagues' rapid concurrence, and will welcome any inquiries.●

By Mr. SPECTER:

S. 292. A bill to amend the Internal Revenue Code of 1986 to provide incentives for investments in disadvantaged and women-owned business enterprises; to the Committee on Finance.

MINORITY AND WOMEN CAPITAL FORMATION ACT OF 1993

Mr. SPECTER. Mr. President, I rise for the purpose of introducing legislation captioned the Minority and Women Capital Formation Act of 1993.

Mr. President, as I have just spoken and heretofore have lent my support as a cosponsor to the Family and Medical Leave Act, I am introducing this legislation which is designed to be an economic stimulus to promote jobs and economic opportunity from the recession which we are currently facing. Unquestionably, small minority- and women-owned businesses can and must play an integral role in helping our country return to solid economic ground, but they cannot do so unless we are able to close the great capital gap facing these businesses.

This bill, captioned the Minority and Women Capital Formation Act of 1993, would close this gap by providing targeted tax incentives for investors to invest equity capital in minority- and women-owned small businesses, as well as venture capital funds which are dedicated to investing in minority and/or women-owned businesses.

Small businesses in general face limited access to capital. In many instances, this lack of access amounts to a failure of many such businesses to succeed. But unlike other small businesses owned by minorities or women which have traditionally faced greater barriers in addressing private capital for startups, these businesses have been unable to achieve such funding.

Candidly, Mr. President, many of these barriers are founded in racism and sexism, two subjects we do not like to talk about but two subjects which are very important and really very pervasive in our society.

While the United States has benefited from civil rights laws, we have not yet moved ahead on the business front to provide the kinds of capitalization which we need. The "capital gap" is a phrase adopted by the U.S. Commission on Minority Business Development. In its 1990 interim report, the Commission found that the "availability of capital is probably the single most important variable affecting minority business." As stated by the Commission "the problem is twofold: Lack of access to capital and credit and the need for development of alternatives to conventional financial instruments and intermediaries."

In its 1992 final report, the Commission said: "Without timely access to capital, you can't start or grow a business, particularly growth firms being weaned off solely Government business."

In 1988, the House Committee on Small Business, in its report, "New Economic Realities, The Rise of Women Entrepreneurs," also noted the barriers which women face in accessing capital and the need for the Federal Government to take into account alternative development financing institutions and eliminating or circumventing such barriers.

Mr. President, this legislation is designed to focus our attention on critical elements of a national strategy for providing access to capital and credit from minorities and women in business. The bill provides investors, and others who invest equity, capital in a small minority- or women-owned businesses or venture capital for minorities, African-Americans, Hispanics, et cetera, will have tax breaks of, first, the option to elect either a tax deduction or a tax credit subject to certain annual and lifetime caps and, second, a partial capital gains exclusion of limited deferral of the remaining capital gain if it is reinvested in another minority- or women-owned small business.

Mr. Robert Johnson, president of Black Entertainment Holdings, the only minority-controlled enterprise publicly traded on the New York Stock Exchange, as I understand it, in last year's Banking Committee hearing on the availability of capital to minority businesses testified:

> The urgency of the problem requires more adventuresome kinds of policies. Policies that are designed to deal with a specific problem should be problem specific in their solution.

Mr. President, I note that in the 1981 to 1990 timeframe, the venture capital resources increased from approximately $5.8 billion to some $36 billion but less than one-half of 1 percent of the capital raised by the majority venture capital industry was invested in minority- or women-operated businesses, which demonstrates the need for legislation of this type and incentives.

I believe minority and women shall business development is critical to urban revitalization, job creation, and long-term economic growth. No one denies the need for urban revitalization and job creation to facilitate a sustained economic recovery. And no one should deny the role that women and minority business owners must have in this effort. During the 102d Congress as a member of the Banking Committee, I heard many first-hand accounts con-

cerning the lack of access to capital for minority- and women-owned businesses. In some cases the cause is outright discrimination; in other instances investor or lender ignorance of the marketplace; in other fear. Whatever the cause, we are facing an emergency that requires Congress' and the President's immediate attention.

To avoid abuse, the bill also imposes minimum holding periods of 5 years for such investments and contains recapture provisions for instances where the minority- or women-owned business or venture capital fund fails to remain qualified within the meaning of the legislation.

Admittedly, my proposal may not be inexpensive. Last year, I received from the Joint Tax Committee a revenue estimate that effectively prevented me from offering my proposal to tax legislation considered late last Congress. To address the cost issue, perhaps the bill should be limited to a tax credit, or perhaps to the capital gains benefit. In any event, I am willing to work with the estimators, my colleagues and others to modify my bill as necessary to achieve the ultimate goal of eliminating the capital gap confronting minority- and women-owned businesses.

Some may question the use of tax policy in the manner I am proposing. However, just as we use tax policy to foster development of housing, jobs, and research and development, so too should we utilize tax policy to foster economic empowerment of minority and women business owners who will provide jobs and generate tax revenues.

Stated differently, this bill is really a Federal investment strategy for such businesses. The proposed tax expenditures represent seed capital to help develop greater self-sufficiency in the long term. In this regard, the bill recognizes that capital targeted to women and minority business is an essential, but often overlooked component of economic development. In my judgment, it is a very creative tool to spur business growth and job creation, particularly in distressed communities.

Another very important feature of the bill is the provision of similar tax incentives for those who invest in venture capital funds dedicated to investing in minority- and/or women-owned businesses. Prior to 1970, the Federal Government had no dedicated sources of financing for disadvantaged businesses. In 1971, however, Congress authorized the creation of the specialized small business investment company [SSBIC] program administered by the Small Business Administration. For the last 20 years SSBIC's have been the primary source of capital for disadvantaged businesses. In the face of tremendous obstacles SSBIC's and the minority venture capital industry have made a real difference. For example, according to the National Association of Investment Companies [NAIC], over the last decade they have raised and invested nearly $1 billion in disadvantaged businesses.

In sum, Mr. President, there remains a need to facilitate the development of minority- and women-owned small business. We cannot allow the capital gap to grow. If we are to remain a productive and competitive nation, we must eliminate it. Moreover, there is no substitute for equity capital. Federal policies should not focus exclusively on debt financing. With targeted tax incentives, such as those that I am proposing, we can cause greater investment of equity in businesses that traditionally have not been able to access it to any significant degree. I believe this capital formation bill will take us a long way toward achieving this goal. I, therefore, encourage my colleagues to join my efforts to enact this much needed legislation.

Mr. President, I ask unanimous consent that the bill be printed in the CONGRESSIONAL RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 292

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Minority and Women Capital Formation Act of 1993".

SEC. 2. INCENTIVES FOR INVESTMENT IN DISADVANTAGED AND WOMEN-OWNED ENTERPRISES.

(a) Subchapter P for chapter 1 of the Internal Revenue Code of 1986 (relating to capital gains and losses) is amended by adding at the end thereof the following new part:

"PART VI—INCENTIVES FOR INVESTMENT IN DISADVANTAGED AND WOMEN-OWNED ENTERPRISES

"Subpart A—Initial investment incentives.
"Subpart B—Capital gain provisions.
"Subpart C—General provisions.

"Subpart A—Initial Investment Incentives

"Sec. 1301. Deduction for investment in minority and women venture capital funds.
"Sec. 1302. Deduction for investment in small minority and women's business corporations.
"Sec. 1303. Taxpayer may elect credit in lieu of deduction.
"Sec. 1304. Recapture provisions.

"SEC. 1301. DEDUCTION FOR INVESTMENT IN MINORITY AND WOMEN VENTURE CAPITAL FUNDS.

"(a) GENERAL RULE.—There shall be allowed as a deduction an amount equal to the sum of the aggregate bases of—

"(1) qualified minority fund interests, and

"(2) qualified women's fund interests,

which are acquired by the taxpayer during the taxable year at their original issuance (directly or through an underwriter), and which are held by the taxpayer as of the close of such taxable year.

"(b) LIMITATIONS.—The amount allowable as a deduction under subsection (a) (1) or (2), respectively, for any taxable year shall not exceed $300,000 ($150,000 in the case of a separate return by a married individual).

"(c) QUALIFIED MINORITY FUND INTEREST.—For purposes of this part, the term 'qualified minority fund interest' means any stock in a domestic corporation or partnership interest in a domestic partnership if—

"(1) such stock or partnership interest (as the case may be) is issued after the date of the enactment of this part solely in exchange for money,

"(2) such corporation or partnership (as the case may be) was formed exclusively for purposes of—

"(A) acquiring at original issuance equity interests in qualified minority corporations, or

"(B) making loans to such corporations, and

"(3) at least 70 percent of the total bases of its assets is represented by—

"(A) investments referred to in paragraph (2), and

"(B) cash and cash equivalents.

For purposes of paragraph (2), the term 'equity interests' means stock, warrants, and convertible securities.

"(d) QUALIFIED WOMEN'S FUND INTEREST.—For purposes of this part, the term 'qualified women's fund interest' shall be determined under subsection (c) by substituting 'qualified women's corporations' for 'qualified minority corporations' in paragraph (2)(B).

"SEC. 1302. DEDUCTION FOR INVESTMENT IN SMALL MINORITY AND WOMEN'S BUSINESS CORPORATIONS.

"(a) GENERAL RULE.—There shall be allowed as a deduction an amount equal to the sum of the aggregate bases of—

"(1) small minority business stock, and

"(2) small women's business corporations,

which are acquired by the taxpayer during the taxable year at its original issuance (directly or through an underwriter), and which are held by the taxpayer as of the close of such taxable year.

"(b) LIMITATIONS.—

"(1) NONCORPORATE TAXPAYERS.—

"(A) IN GENERAL.—In the case of a taxpayer other than a corporation, the amount allowable as a deduction under subsection (a) (1) or (2), respectively, for any taxable year shall not exceed the lesser of—

"(i) $50,000 ($25,000 in the case of a separate return by a married individual), or

"(ii) $500,000 ($250,000 in the case of a separate return by a married individual), reduced by the aggregate amount allowable as a deduction under subsection (a) (1) or (2), respectively, to the taxpayer for prior taxable years.

"(B) CARRYOVER.—If the amount otherwise deductible under subsection (a) exceeds the limitation under subparagraph (A)(i) for any taxable year, the amount of such excess shall be treated as an amount described in subsection (a) which is paid in the following taxable year.

"(C) SPECIAL RULE.—The amount allowable as a deduction under subparagraph (A) (i) or (ii) with respect to any joint return shall be allocated equally between the spouses in determining the limitation under subparagraph (A)(ii) for any subsequent taxable year.

"(2) CORPORATION TAXPAYER.—In the case of a corporation, the amount allowable as a deduction under subsection (a) (1) or (2), respectively, for any taxable year shall not exceed $100,000.

"(c) SMALL MINORITY BUSINESS STOCK.—For purposes of this part, the term 'small minority business stock' means any stock in a qualified minority corporation if—

"(1) as of the date of the issuance of such stock, the total bases of property owned or leased by such corporation does not exceed $12,000,000,

"(2) such stock is issued after the date of the enactment of this part solely in exchange for money, and

"(3) such corporation elects to treat such stock as small minority business stock for purposes of this section.

An election under paragraph (3), once made, shall be irrevocable.

"(d) SMALL WOMEN'S BUSINESS STOCK.—For purposes of this part, the term 'small women's business stock' means any stock in a qualified women's corporation if—

"(1) as of the date of the issuance of such stock, the total bases of property owned or leased by such corporation does not exceed $12,000,000,

"(2) such stock is issued after the date of the enactment of this part solely in exchange for money, and

"(3) such corporation elects to treat such stock as small women's business stock for purposes of this section.

An election under paragraph (3), once made, shall be irrevocable.

"(e) ISSUER LIMITATION.—The aggregate amount of stock for which an issuer may make an election under subsection (c)(3) or (d)(3) shall not exceed $5,000,000.

"SEC. 1303. TAXPAYER MAY ELECT CREDIT IN LIEU OF DEDUCTION.

"(a) MINORITY AND WOMEN VENTURE CAPITAL FUNDS.—

"(1) IN GENERAL.—A taxpayer may elect, in lieu of the deduction under section 1301, to take a credit against the tax imposed by this chapter for the taxable year in an amount equal to 15 percent of the sum of the aggregate bases of—

"(A) qualified minority fund interests, and

"(B) qualified women's fund interest,

which are acquired by the taxpayer during the taxable year at their original issuance (directly or through an underwriter), and which are held by the taxpayer at the end of the taxable year.

"(2) LIMITATIONS.—The amount allowable as a credit under paragraph (1) for any taxable year shall not exceed the lesser of—

"(A) $500,000 ($250,000 in the case of a separate return by a married individual), or

"(B) $7,000,000, ($3,500,000 in the case of a separate return by a married individual), reduced by the amount of the credit allowed under paragraph (1) for all preceding taxable years.

"(3) CARRYOVER.—If the amount otherwise allowable as a credit under paragraph (1) exceeds the limitation under paragraph (2)(A) for any taxable year, the amount of such excess shall, subject to the limitation of paragraph (2), be treated as an amount which is allowable as a credit in the following taxable year.

"(b) SMALL MINORITY AND WOMEN'S BUSINESS CORPORATIONS.—

"(1) IN GENERAL.—A taxpayer may elect, in lieu of the deduction under section 1302, to take a credit against the tax imposed by this chapter for the taxable year in an amount equal to 10 percent of the sum of the aggregate bases of—

"(A) small minority business stock

"(B) small women's business corporations,

which are acquired by the taxpayer during the taxable year at their original issuance (directly or through an underwriter), and which are held by the taxpayer at the end of the taxable year.

"(2) LIMITATIONS.—The amount allowable as a credit under paragraph (1) for any taxable year shall not exceed the lesser of—

"(A) $250,000 ($125,000 in the case of a separate return by a married individual), or

"(B) $5,000,000, ($2,500,000 in the case of the separate return by a married individual), reduced by the amount of the credit allowed under paragraph (1) for all preceding taxable years.

"(3) CARRYOVER.—If the amount otherwise allowable as a credit under paragraph (1) exceeds the limitation under paragraph (2)(A) for any taxable year, the amount of such excess shall, subject to the limitation of paragraph (2), be treated as an amount which is allowable as a credit in the following taxable year.

"(c) APPLICATION WITH OTHER PROVISIONS.—For purpose of this title, any credit allowed under this section shall be treated in the same manner as a credit allowed under subpart B of part IV of subchapter A.

"(d) ELECTION.—An election under the section for any taxable year shall be made at such time and in such manner as the Secretary may prescribe and shall apply with respect to all acquisitions to which this subpart applies for such taxable year.

"SEC. 1304. RECAPTURE PROVISIONS.

"(a) BASIS REDUCTION.—For purposes of this title, the basis of any qualified minority or women's fund interest or small minority or women's business stock shall be reduced by the amount of the deduction allowed under section 1301 or 1302, or the credit allowed under section 1303, with respect to such property. In any case in which the deduction allowable under subsection (a) of section 1301 or 1302 (as the case may be) is limited by reason of subsection (b) of such section, or in any case in which the credit allowable under subsection (a)(1) or (b)(1) of section 1303 is limited by reason of subsection (a)(2) or (b)(2) of section 1303, the deduction or credit shall be allocated proportionately among the qualified minority or women's fund interests or small minority or women's business stock, whichever is applicable, acquired during the taxable year on the basis of their respective bases (as determined before any reduction under this subsection).

"(b) DEDUCTION RECAPTURED AS ORDINARY INCOME.—

"(1) IN GENERAL.—For purposes of section 1245—

"(A) any property the basis of which is reduced under subsection (a) (and any other property the basis of which is determined in whole or in part by reference to the adjusted basis of such property) shall be treated as section 1245 property, and

"(B) any reduction under subsection (a) shall be treated as a deduction allowed for depreciation.

If an exchange of any stock the basis of which is reduced under subsection (a) qualifies under section 354(a), 355(a), or 356(a), the amount of gain recognized under section 1245 by reason of this paragraph shall not exceed the amount of gain recognized in the exchange (determined without regard to this paragraph).

"(2) CERTAIN EVENTS TREATED AS DISPOSITIONS—For purposes of this section, if—

"(A) a deduction was allowable under section 1301, or a credit was allowable under section 1303, with respect to any stock in a corporation or interest in a partnership and such corporation or partnership, as the case may be, ceases to meet the requirements of paragraphs (2) and (3) of section 1301(c), or

"(B) a deduction was allowable under section 1302, or a credit was allowable under section 1303, with respect to any stock in a corporation and such corporation ceases to be a qualified minority corporation or qualified women's corporation, whichever is applicable,

the taxpayer shall be treated as having disposed of such property for an amount equal to its fair market value.

"(c) INTEREST CHARGED IF DISPOSITION WITHIN 5 YEARS.—

"(1) IN GENERAL.—If a taxpayer disposes of any property the basis of which is reduced under subsection (a) before the date 5 years after the date of its acquisition by the taxpayer, the tax imposed by this chapter for the taxable year in which such disposition occurs shall be increased by interest at the underpayment rate (established under section 6621(a)(2))—

"(A) on the additional tax which would have been imposed under this chapter for the taxable year in which such property was acquired if such property had not been taken into account under section 1301, 1302, of 1303, whichever is applicable;

"(B) for the period beginning on the due date for the taxable year in which the property was acquired and ending on the due date for the taxable year in which the disposition occurs.

For purposes of the preceding sentence, the term 'due date' means the due date (determined without regard to extensions for filing the return of the tax imposed by this chapter.

"(2) SPECIAL RULE.—Any increase in tax under paragraph (1) shall not be treated as a tax imposed by this chapter, for purposes of determining the amount of any credit allowable under this chapter or the amount of the minimum tax imposed by section 55.

"Subpart B—Capital Gain Provisions

"SEC. 1311. EXCLUSION OF GAIN ON SALE BY QUALIFIED MINORITY OR WOMEN'S FUND.

"(a) GENERAL RULE.—Gross income shall not include 50 percent of any gain on the sale or exchange of any property by a qualified minority or women's fund if such property was acquired after the date of the enactment of this part and was held by such fund for at least 5 years.

"(b) QUALIFIED MINORITY FUND.—For purposes of this section, the term 'qualified minority fund' means any domestic corporation or domestic partnership which meets the requirements of paragraphs (2) and (3) of section 1301(c).

"(c) QUALIFIED WOMEN'S FUND.—For purposes of this section, the term 'qualified women's fund' means any domestic corporation or partnership meeting the requirements of paragraphs (2) and (3) of section 1301(c) (as modified by section 1301(d)).

"SEC. 1312. DEFERRAL OF CAPITAL GAIN REINVESTED IN CERTAIN PROPERTY.

"(a) GENERAL RULE.—Except as otherwise provided in this section, in the case of an individual, any qualified reinvested capital gain shall be taken into account for purposes of this title—

"(1) in the 9th taxable year following the taxable year of the sale or exchange, or

"(2) in such earlier taxable year (or years) following the taxable year of the sale or exchange as the taxpayer may provide.

"(b) LIMITATIONS.—

"(1) DOLLAR LIMITATION.—

"(A) IN GENERAL.—The amount of the gain to which subsection (a) applies shall not exceed $500,000, reduced by the aggregate amount of gain of the taxpayer to which subsection (a) applied for prior taxable years. This subparagraph shall be applied separately for property described in subsections (c)(2) (A) and (B) and for property described in subsection (c)(2) (C) and (D).

"(B) SPECIAL RULE.—The amount of gain to which subsection (a) applied on a joint re-

turn for any taxable year shall be allocated equally between the spouses in determining the limitation under subparagraph (A) for any subsequent taxable year.

"(2) INELIGIBILITY OF CERTAIN TAXPAYERS.—Subsection (a) shall not apply to—

"(A) a married individual (as defined in section 7703) who does not file a joint return for the taxable year, or

"(B) any estate or trust.

"(c) QUALIFIED REINVESTED CAPITAL GAIN.—For purposes of this section—

"(1) QUALIFIED REINVESTED CAPITAL GAIN.—The term 'qualified reinvested capital gain' means the amount of any long-term capital gain (determined without regard to this section) from any sale or exchange after the date of the enactment of this part to which an election under this section applies but only to the extent that the amount of such gain exceeds the excess (if any) of—

"(A) the amount realized on such sale or exchange, over

"(B) the cost of any qualified property which the taxpayer elects to take into account under this paragraph with respect to such sale or exchange.

For purposes of subparagraph (B), the cost of any property shall be reduced by the portion of such cost previously taken into account under this paragraph.

"(2) QUALIFIED PROPERTY.—The term 'qualified property' means—

"(A) any qualified minority fund interest acquired by the taxpayer at its original issuance (directly or through an underwriter),

"(B) any small minority business stock acquired by the taxpayer at its original issuance (directly or through an underwriter),

"(C) any qualified women's fund interest acquired by the taxpayer at its original issuance (directly or through an underwriter), and

"(D) any small women's business stock acquired by the taxpayer at its original issuance (directly or through an underwriter).

Such term shall not include any property taken into account by the taxpayer under section 1301, 1302, or 1303.

"(3) REINVESTMENT PERIOD.—The term 'reinvestment period' means, with respect to any sale or exchange, the period beginning on the date of the sale or exchange and ending on the day 1 year after the close of the taxable year in which the sale or exchange occurs.

"(d) TERMINATION OF DEFERRAL IN CERTAIN CASES.—

"(1) CERTAIN DISPOSITIONS, ETC., OF REPLACEMENT PROPERTY.—

"(A) IN GENERAL.—If the taxpayer disposes of any qualified property before the date 5 years after the date of its purchase—

"(i) any amount treated as a qualified reinvested capital gain by reason of the purchase of such property (to the extent not previously taken into account under subsection (a)) shall be taken into account for the taxable year in which such disposition or cessation occurs, and

"(ii) the tax imposed by this chapter for the taxable year in which such disposition or cessation occurs shall be increased by interest at the underpayment rate (established under section 6621(a)(2))—

"(I) on the additional tax which would have been imposed under this chapter (but for this section) for the taxable year of the sale or exchange, and

"(II) for the period of the deferral under this section.

Any increase in tax under clause (ii) shall not be treated as a tax imposed by this chapter for purposes of determining the amount of any credit allowable under this chapter or the amount of the minimum tax imposed by section 55.

"(B) CERTAIN EVENTS TREATED AS DISPOSITIONS.—For purposes of subparagraph (A), rules similar to the rules of section 1304(b)(2) shall apply.

"(2) LAST TAXABLE YEAR.—In the case of the last taxable year of any taxpayer, any qualified reinvestment capital gain (to the extent not previously taken into account under subsection (a)) shall be taken into account for such last taxable year.

"(e) COORDINATION WITH INSTALLMENT METHOD REPORTING.—This section shall not apply to any gain from any installment sale (as defined in section 453(b)) if section 453(a) applies to such sale.

"(f) STATUTE OF LIMITATIONS.—If any gain is realized by the taxpayer on any sale or exchange to which an election under this section applies, then—

"(1) the statutory period for the assessment of any deficiency with respect to such gain shall not expire before the expiration of 3 years from the date the Secretary is notified by the taxpayer (in such manner as the Secretary may by regulations prescribe) of—

"(A) the taxpayer's cost of purchasing any qualified property,

"(B) the taxpayer's intention not to purchase qualified property within the reinvestment period, or

"(C) a failure to make such purchase within the reinvestment period, and

"(2) such deficiency may be assessed before the expiration of such 3-year period notwithstanding the provisions of any law or rule of law which would otherwise prevent such assessment.

"Support C—General Provisions

"Sec. 1321. Qualified minority corporation defined.

"Sec. 1322. Qualified women's corporation defined.

"Sec. 1322. Other definitions and special rules.

"SEC. 1321. QUALIFIED MINORITY CORPORATION DEFINED.

"For purposes of this part, the term 'qualified minority corporation' means any domestic corporation if—

"(1) 50 percent or more of the total value of the stock of such corporation is held by individuals who are members of a minority,

"(2) throughout the 5-year period ending on the date as of which the determination is being made (or, if shorter, throughout the period such corporation was in existence), such corporation has been engaged in the active conduct of a trade or business or in startup activities relating to a trade or business, and

"(3) substantially all of the assets of such corporation are used in the active conduct of a trade or business or in startup activities related to a trade or business.

"SEC. 1322. QUALIFIED WOMEN'S CORPORATION.

"For purposes of this part, the term 'qualified women's corporation' means any domestic corporation if—

"(1) 50 percent or more of the total value of the stock of such corporation is held by individuals who are women,

"(2) the management and daily business operations of the corporation are controlled by one or more women, and

"(3) the requirements of paragraphs (2) and (3) of section 1301 are met with respect to the corporation.

"SEC. 1323. OTHER DEFINITIONS AND SPECIAL RULES.

"(A) MINORITY INDIVIDUALS.—For purposes of this part, individuals are members of a minority if the participation of such individuals in the free enterprise system is hampered because of social disadvantage within the meaning of section 301(d) if the Small Business Investment Act of 1958.

"(b) CONTROLLED GROUP RULES.—

"(1) IN GENERAL.—All corporations which are members of the same controlled groups shall be treated as 1 corporation for purposes of this part.

"(2) CONTROLLED GROUP.—For purposes of paragraph (1), the term 'controlled group' has the meaning given such term by section 179(d)(7)."

(b) The table of parts for subchapter P of chapter 1 of such Code is amended by adding at the end thereof the following item:

"Part VI. Incentives for investments in disadvantaged and women-owned enterprises."

(c) The amendments made by this section shall apply to taxable years ending after the date of the enactment of this Act.

By Mr. MCCAIN (for himself, Mr. CAMPBELL, Mr. SIMON, Mrs. KASSEBAUM, Mr. AKAKA, Mr. STEVENS, Mr. GORTON, Mr. MURKOWSKI, and Mr. DASCHLE):

S. 293. A bill to provide for a National Native American Veterans' Memorial; to the Select Committee on Indian Affairs.

NATIVE AMERICAN VETERANS' MEMORIAL ESTABLISHMENT ACT

Mr. MCCAIN. Mr. President, I rise today on behalf of myself and Senators CAMPBELL, SIMON, KASSEBAUM, AKAKA, STEVENS, GORTON, MURKOWSKI, and DASCHLE to introduce legislation to establish a National Native American Veterans' Memorial. The bill would authorize the establishment of the memorial to be located within the future National Museum of the American Indian as authorized under Public Law 101-185.

From the Revolution through Desert Storm, native Americans have served, suffered and died for the cause of American freedom. During World War II, military communications between allied forces were constantly intercepted by the enemy with tragic consequences for the success of allied missions and forces. The legendary Navajo Code Talkers used their language to devise an unbreakable code, and by so doing greatly hastened the day of allied victory. The Navajo Code was the only allied code that the enemy was never able to decipher.

Earlier, the Choctaws provided the same service for the American Expeditionary Force in World War I. Like their Navajo successors, the Choctaw Code Talkers devised the only code that the Germans could not break. The strength of their great service, like the service of all native Americans who have fought in their country's battles, rested on the conviction they shared with the rest of their countrymen. That conviction was best expressed by a great chief of the Choctaws, Pushmataha, who in 1811 appealed to his people not to join the British in their war with the Americans. "We do

not take up the warpath," he told his people, "without a just cause and an honest purpose."

Native Americans have never served their country in war time without a just cause and an honest purpose. I believe that the tenacity with which Indians hold to their convictions is the source of their tenacity on the battlefield. I greatly admire those values as I admire the great courage and the exceptional fighting ability of native Americans.

I would point out that our service academies still teach the military tactics of the great chiefs. The lessons taught to us by men like Geronimo and Chief Joseph are still employed by American Armed Forces whenever they are called upon to defend the interests of this Nation. Professional soldiers can recognize superior fighting skills and bravery when they see it on the battlefield. And we recognize military genius when we study the exploits of these great Indian leaders.

Sadly, though we may acknowledge their military prowess and their contributions to our victories, we have not always acknowledged our debts to the native American. After wars have ended, the Indian's prominent place in the battlefield has been replaced with second-class citizenship at home. That sad truth is captured in the life of Ira Hayes. A Pima Indian who served in the Marine Corps in World War II, Ira Hayes was a genuine American hero. In a place very near here, he is depicted in the Iwo Jima Memorial planting his country's flag in the soil of a foreign land. His heroism has been enshrined for all time in that memorial, but the man was soon forgotten. He died a broken man, a victim of alcoholism.

I hope that we will not only acknowledge the service of native American veterans by enacting this legislation, but we also will honor our debts to them in peacetime. In all tribes, the native American bows to no one in the depth of his patriotism and in his love of country. They fought, more bravely than many, for the same values that all the sons and daughters of America have so nobly preserved when they have taken up arms to defend us. They are the values Chief Joseph described, much better than I can. He pleaded:

> Let me be a free man, free to travel, free to stop, free to work, free to trade where I choose, free to choose my own teachers, free to follow the religion of my fathers, free to think and talk and act for myself.

Michael Noline of the San Carlos Apache Tribe in Arizona and Eric Bentzlen of the Sisseton-Wahpeton Sioux Tribe in South Dakota did not return from the Persian Gulf. Like native American veterans in previous wars, they perished in service to this country and the values Chief Joseph spoke of so eloquently.

I view this national memorial as only a small way in which we can honor the service and sacrifice of all native American veterans. Such sacrifice deserves to be memorialized in something more lasting, more meaningful than bronze. Let their memory be the spirit that guides us all as we seek means to redress the disservice done to the native American. I promise you the memory of their valor will guide me, for I, too, want to remain a free man, and I know that they died so that we all might be free to think and talk and act for ourselves.

Mr. President, I ask unanimous consent that a copy of the bill be printed in the RECORD immediately after my remarks.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 293

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Native American Veterans' Memorial Establishment Act".

SEC. 2. FINDINGS.

The Congress finds that:

(1) Native Americans across the Nation, have a long, proud and distinguished tradition of service in the armed forces of the United States.

(2) Native Americans have historically served in the armed forces of the United States in numbers which far exceed their representation in the population of the United States.

(3) Native Americans have lost their lives in the service of their Nation, and in the cause of peace.

(4) The National Museum of the American Indian was established as a living memorial to Native Americans.

(5) The National Museum of the American Indian is an extraordinary site and is an ideal location to establish a National Native American Veterans' Memorial.

(6) A National Native American Veterans' Memorial would further the purposes of the National Museum of the American Indian by giving all Americans the opportunity to learn of the proud and courageous tradition of service of Native Americans in the armed forces of the United States.

SEC. 3. AUTHORIZATION FOR ESTABLISHMENT OF MEMORIAL.

(a) MEMORIAL.—The Board of Trustees of the National Museum of the American Indian is authorized to design, construct, and maintain a National Native American Veterans' Memorial (hereafter referred to in this section as the "Memorial").

(b) SITE.—The Board of Trustees shall select a suitable site for the Memorial within the interior structure of the facility provided for by section 7(a) of the National Museum of the American Indian Act to house the portion of the National Museum to be located in the District of Columbia.

(c) DESIGN AND PLANS.—The Board of Trustees is authorized to hold a competition to select the design of the Memorial.

(d) DONATIONS.—Notwithstanding any other provision of law, the Board of Trustees may accept, retain, and expend donations of funds, property, or services from individuals, foundations, corporations, or public entities for the purpose of designing, constructing, or maintaining the Memorial.

(e) PAYMENT OF EXPENSES.—The United States Government shall not pay any of the expenses of the establishment of the Memorial other than providing the site referred to in subsection (b).

SEC. 4. DEFINITIONS.

As used in this Act:

(1) The term "Native American" means an Indian, a Native Hawaiian, and an Alaska Native.

(2) The term "Indian" means a member of an Indian tribe.

(3) The term "Native Hawaiian" means any individual who is a descendant of the aboriginal people who, prior to 1778, occupied and exercised sovereignty in the area that now comprises the State of Hawaii.

(4) The term "Alaska Native" means any Eskimo, Aleut, or Alaska Indian.

By Mr. BINGAMAN (for himself and Mr. DOMENICI):

S. 294. A bill to authorize the Secretary of the Interior to formulate a program for the research, interpretation, and preservation of various aspects of colonial New Mexico history, and for other purposes; to the Committee on Energy and Natural Resources.

THE COLONIAL NEW MEXICO COMMEMORATIVE ACT

Mr. BINGAMAN. Mr. President, today I am pleased to reintroduce legislation to commemorate a significant period in the history of the State of New Mexico and the United States. In 1598, approximately 10 years before the establishment of the Jamestown settlement, the colonization of New Mexico territory by Spanish explorers began nearly 200 years of interaction between our American Indian and Hispanic peoples.

These two centuries of interaction, while often traumatic, have wrought a unique cultural landscape which distinguishes the character of New Mexico within the United States and even within the American Southwest.

To preserve and protect the tangible historic resources of the colonial New Mexico period and, equally important, the more intangible qualities such as the traditions and customs of our local American Indian and Hispanic cultures, I am introducing legislation which formally recognizes the influence of this period on our national history and establishes a vehicle by which this unique period can be preserved and interpreted for the benefit of the American people.

This legislation directs the Secretary of the Interior to prepare a comprehensive management plan to provide direction for commemorative actions and projects. The plan will establish a process and procedures for undertaking research, develop a survey program to further evaluate known resources, and identify sites and features that require additional study; and identify a core system of interpretive sites and features that would provide a comprehensive overview of the colonial New Mexico story. Most importantly, this plan will evaluate and recommend high pri-

ority sites and resources that need protection and assistance. This legislation also establishes a Colonial New Mexico Preservation Advisory Committee, which will advise the Secretary with respect to the administration of this act.

In 1991, I convened a New Mexico based task force to study this issue and to provide the recommendations which ultimately resulted in this bill. The task force was composed of representatives from local, State, and Federal agencies as well as representatives from the regional Indian tribes and Hispanic communities. As a result of their hard work, I believe that there is strong support for this initiative throughout the State and for the establishment of a Colonial New Mexico Advisory Committee whose function it will be to implement this effort. Last Congress identical legislation passed the Senate, but time ran out in the legislative session before action could be taken in the House. I believe that there is strong support for this legislation among my colleagues from New Mexico in the House, as well as from Mr. DOMENICI here in the Senate, and I hope that the House and Senate will quickly pass the Colonial New Mexico Commemorative Act.

Mr. President, I ask unanimous consent that the text of this bill and my statement be placed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

S. 294

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Colonial New Mexico Commemorative Act".

SEC. 2. FINDINGS AND PURPOSE.

(a) FINDINGS.—Congress finds that—

(1) in 1598, almost a decade before the first permanent English settlement was established at Jamestown, Spanish colonists entered New Mexico, beginning more than 2 centuries of colonization that would indelibly mark the character of the American Southwest;

(2) because of the flow of history, New Mexico has remained a unique area of the Spanish borderlands;

(3) as a result of its remoteness, New Mexico changed more slowly than other settlements and has retained many significant remnants of colonial customs, language, and attitudes; and

(4) the interaction of the American Indian and Hispanic colonial heritages resulted in customs, architecture, and many other manifestations that are unique to today's American culture.

(b) PURPOSE.—In order to enhance the preservation, interpretation, and public understanding of various aspects of colonial New Mexico, the purpose of this Act is to authorize the Secretary of the Interior to formulate a program for the research, interpretation, and preservation of various aspects of colonial New Mexico history.

SEC. 3. DEFINITIONS.

As used in this Act:

(1) COMMITTEE.—The term "Committee" means the Colonial New Mexico Preservation Advisory Committee established by section 6.

(2) PLAN.—The term "plan" means the comprehensive management plan described in section 5.

(3) SECRETARY.—The term "Secretary" means the Secretary of the Interior.

SEC. 4. DUTIES OF SECRETARY.

(a) PLAN.—

(1) PREPARATION.—The Secretary shall prepare the comprehensive management plan in accordance with section 5.

(2) IMPLEMENTATION.—In close consultation with the Office of Cultural Affairs of the State of New Mexico and the Committee, the Secretary shall—

(A) coordinate the activities of Federal, State, and local governments, and private businesses and organizations, to carry out the plan and the purpose of this Act; and

(B) consistent with standards established by the Secretary for the preservation of historic properties and for educational programs, and consistent with the National Historic Preservation Act (16 U.S.C. 470 et seq.), prepare guidelines and standards for projects, as identified in the plan, that will further public understanding of colonial New Mexico history.

(b) GRANTS.—

(1) IN GENERAL.—From funds appropriated, donated, or otherwise made available to the Secretary, the Secretary shall award grants to tribal, governmental, and nongovernmental entities to conserve and protect structures, objects, and sites, and help support cultural events, that have outstanding significance in the commemoration of colonial New Mexico, except that the Federal share shall not exceed 50 percent of the cost of each project.

(2) NON-FEDERAL SHARE.—The non-Federal share may be in the form of cash or services, including donation of labor for project implementation.

(c) SURVEYS AND ARCHAEOLOGICAL INVESTIGATIONS.—The Secretary shall contract for surveys and archaeological and historical investigations of sites relating to colonial New Mexico, including the preparation of reports and maps, and the curation of artifacts.

(d) PUBLICATIONS.—The Secretary shall publish study reports and educational materials.

(e) NOMINATIONS TO NATIONAL REGISTER OF HISTORIC PLACES.—The Secretary shall prepare thematic nominations to the National Register of Historic Places of colonial sites and resources in New Mexico.

(f) STAFF OF OTHER AGENCIES.—On a reimbursable basis, the Secretary may procure the services of personnel detailed from the State of New Mexico or other Federal agencies.

(g) DONATIONS.—The Secretary may seek and accept donations of funds or services from public and private entities to carry out this Act.

SEC. 5. COMPREHENSIVE MANAGEMENT PLAN.

(a) IN GENERAL.—Not later than 2 years after funds are made available for purposes of this Act, the Secretary, in consultation with the Committee, the State of New Mexico, units of local government, and private groups, shall prepare a comprehensive management plan to provide direction for commemorative actions and projects.

(b) CONTENTS.—The plan shall—

(1) establish a process and procedures for undertaking research relating to colonial New Mexico and a program for regular publication of research materials and findings;

(2) develop a survey program to further evaluate known resources and identify sites and features that require additional study;

(3) identify a core system of interpretive sites and features that would provide a comprehensive overview of the colonial New Mexico story;

(4) prepare interpretive materials to address the colonial New Mexico story and identify locations where this material will be available to the public;

(5) evaluate and recommend high priority sites and resources that need protection and assistance;

(6) with the assistance of site owners, prepare options for the protection and management of high priority colonial New Mexico resources;

(7) evaluate and recommend highway routes, in existence on the date of the plan, that could be designated by the State of New Mexico as colonial New Mexico tour routes; and

(8) evaluate the feasibility of and need for developing commemorative centers in New Mexico in accordance with section 7(a).

SEC. 6. ESTABLISHMENT OF ADVISORY COMMITTEE.

(a) IN GENERAL.—There is established in the Department of the Interior the Colonial New Mexico Preservation Advisory Committee to advise the Secretary with respect to the administration of this Act.

(b) MEMBERSHIP.—

(1) COMPOSITION.—The Committee shall be composed of 15 members who have knowledge of New Mexico colonial history and culture and who shall be appointed by the Secretary, of whom—

(A) three members shall be appointed from recommendations submitted by the Governor of New Mexico, of whom one member shall represent the Office of Cultural Affairs of the State of New Mexico;

(B) one member shall be appointed from recommendations submitted by the All Indian Pueblo Council;

(C) one member—

(i) shall be from the general public; and

(ii) shall have knowledge of colonial history in New Mexico;

(D) four members—

(i) shall be appointed from recommendations submitted by local governments in New Mexico; and

(ii) shall represent Hispanic communities;

(E) one member shall be appointed from recommendations submitted by the President of the University of New Mexico;

(F) one member shall be appointed from recommendations submitted by the President of New Mexico State University;

(G) one member shall be appointed from recommendations jointly submitted by the Navajo and Apache tribal governments;

(H) one member shall have professional expertise in the colonial history of New Mexico;

(I) one member shall have professional expertise in architectural history; and

(J) one member shall be the Secretary or the Secretary's designee and shall serve in an ex-officio capacity.

(2) CHAIRPERSON.—

(A) IN GENERAL.—The Committee shall elect a chairperson from among its members.

(B) TERM.—The chairperson shall serve for a term of 2 years.

(3) VACANCIES.—A vacancy in the Committee shall be filled in the manner in which the original appointment was made.

(4) TERMS.—

(A) IN GENERAL.—Each member of the Committee shall be appointed for a term of 5 years.

(B) MEMBERS FILLING VACANCIES.—A member appointed to fill a vacancy shall serve for the remainder of the term for which the member's predecessor was appointed.

(C) EXTENDED SERVICE.—A member of the Committee may serve after the expiration of the member's term until a successor is appointed.

(5) COMPENSATION.—Members of the Committee shall serve without compensation.

(6) TRAVEL EXPENSES.—While away from their homes or regular places of business in the performance of services for the Committee, members of the Committee shall be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in the Government service are allowed expenses under section 5703 of title 5, United States Code.

(c) MEETINGS.—

(1) IN GENERAL.—The Committee shall meet at least twice annually or at the call of the chairperson or a majority of the members of the Committee.

(2) QUORUM.—A simple majority of members of the Committee shall constitute a quorum.

(d) HEARINGS.—To carry out this section, the Committee may hold public hearings, take testimony, and record the views of the public regarding the plan and implementation of the plan.

(e) TERMINATION.—The Committee shall terminate 10 years after completion of the appointment of the first group of members.

SEC. 7. COMMEMORATIVE CENTERS.

(a) IN GENERAL.—

(1) IN GENERAL.—The Secretary may develop commemorative centers, operate educational programs, provide technical assistance, conduct cultural events, and prepare media materials, except that the Federal share of a project shall not exceed 50 percent of the total cost of development.

(2) NON-FEDERAL SHARE.—The non-Federal share may be in the form of cash or services.

(b) ESPAÑOLA PLAZA CENTER.—

(1) IN GENERAL.—In consultation with the Committee, the Secretary may pay to the city of Española, New Mexico, the Federal share of planning, developing, and operating a commemorative center as an element of the Spanish Commemorative Plaza.

(2) FEDERAL SHARE.—The Federal share may not exceed 50 percent of the total cost of the Española Plaza project.

(3) NON-FEDERAL SHARE.—The non-Federal share may be in the form of cash or services.

SEC. 8. GALISTEO BASIN STUDY.

In accordance with the National Park Service document entitled "Alternative Concepts for Commemorating Spanish Colonization" and dated February 1991, the Secretary shall undertake a special resource study of the major prehistoric and historic sites in the Galisteo Basin relating to colonial New Mexico. The study shall include evaluations of significance, site integrity, threats, and protection and management options.

SEC. 9. PUEBLO TRAIL.

(a) REDESIGNATION.—The Masau Trail, as designated by Title II of Public Law 100–225 (16 U.S.C. 460uu–11 et seq.), is redesignated as the Pueblo Trail.

(b) LEGAL REFERENCES.—Any reference in any record, map, or other document of the United States to the Masau Trail is deemed to be a reference to the Pueblo Trail.

(c) CONFORMING AMENDMENTS.—

(1) The title heading of title II of Public Law 100–225 (16 U.S.C. 460uu–11 et seq.) is amended by striking "MASAU" and inserting "PUEBLO".

(2) Public Law 100–225 (16 U.S.C. 460uu et seq.) is amended by striking "Masau" each place it appears in sections 201, 204, and 510 and inserting "Pueblo".

SEC. 10. ANNUAL REPORTS.

(a) IN GENERAL.—The Secretary shall submit an annual report to Congress that lists with respect to this Act—

(1) actions taken by the Secretary;

(2) entities to which any grants were made during the fiscal year and any recipients of technical assistance; and

(3) actions taken to protect and interpret significant sites, structures, and objects relating to colonial New Mexico.

(b) COST ESTIMATES.—The report shall include detailed cost estimates of projects that are proposed to be funded under this Act during the next fiscal year.

SEC. 11. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to the Department of the Interior $5,000,000 to carry out this Act, to remain available until expended.

Mr. DOMENICI. Mr. President, I am pleased to rise today to join the other Senator from New Mexico [Mr. BINGAMAN] who is sponsoring legislation to establish in the Department of the Interior the Colonial New Mexico Preservation Commission.

The Spanish colonization of the United States began in 1598, more than a decade before the first English settlement was established at Jamestown. The settlement by Spanish colonists within New Mexico continued to influence development within the area for more than two centuries. The interaction of the Spanish colonists with the American Indians within the area produced a way of life and a blend of customs that embodies the best of both cultures. The contributions of the Spanish colonists to the character of New Mexicans' way of life, architecture, sense of community, and culture are evident today.

The influence of the Spanish colonial settlement is more apparent within New Mexico than in other areas, due to New Mexico's geographic location and remoteness. The remnants of customs, language, and attitudes of colonial settlement are apparent and integral to New Mexican society, which is unique within the American culture.

New Mexico and most of the Southwest are experiencing cumulative pressures from economic expansion, housing development, and population increases. These impacts have the potential to dilute and obscure the heritage of the Spanish colonists and the vital role they played in the settlement and development of New Mexico. The understanding of the role of this rich tradition and history on the American development within New Mexico needs to be preserved, documented, and shared as a continuing American legacy.

Mr. President, I urge the Senate to move rapidly on this important legislation, in order to enhance the preservation, interpretation, and public understanding of various aspects of colonial New Mexico, and establish a commission representing government and private sector interests to formulate a program for the research, interpretation, and preservation of various aspects of the colonial New Mexico story.

By Mr. DURENBERGER (for himself, Mr. KOHL, Mr. BAUCUS, Mr. SMITH, Mr. GRASSLEY, Mr. CAMPBELL, Mr. LEAHY, Mr. KEMPTHORNE, Mr. ROTH, Mr. LUGAR, Mr. COHEN, Mr. BROWN, Mr. SIMPSON, Mr. CONRAD, Mr. BURNS, Mr. DORGAN, Mr. COATS, Mr. JEFFORDS, and Mr. WALLOP):

S. 295. A bill to amend title 23, United States Code, to remove the penalties for States that do not have in effect safety belt and motorcycle helmet traffic safety programs, and for other purposes; to the Committee on Environment and Public Works.

REMOVAL OF PENALTIES ON STATES WITHOUT SAFETY BELT AND HELMET PROGRAMS

• Mr. DURENBERGER. Mr. President, the Intermodal Surface Transportation Efficiency Act of 1991 included provisions regarding the use of safety belts and motorcycle helmets, section 153 of title 23, United States Code. The goals of these provisions are laudable—the reduction of the number of fatalities and crippling injuries which occur on our Nation's roadways. In 1989 over 45,000 lives were lost in motor vehicle accidents and over 3 million people were injured. The consequence of these deaths and injuries cost our country approximately $74 billion each year. These losses are generated by a combination of lost lives, productivity, medical and rehabilitation expenses, and insurance and litigation costs.

The intent is to provide a carrot and stick mechanism of manipulating the disbursement of Federal transportation funds in order to coerce States into adopting mandatory safety belt and helmet laws. The proponents of the safety belt and helmet provisions expect that this legislation will significantly reduce those losses which befall unbelted motorists and unhelmeted motorcyclists. Yet of the 10 safest States to ride a motorcycle, based on fatalities per 10,000 registrations, 7 are States which do not require mandatory helmet use for adults.

This is an important States rights issue. I believe there is merit in using Federal funds for highway safety research, to 6encourage States to improve traffic safety via greater education efforts and by stimulating innovative programs designed to reduce the number of high-risk motorists. However, I have serious reservations about using Federal blackmail to force States into enacting mandatory seatbelt and motorcycle helmet laws. Likewise, I believe that outlining how a State spends its own money—which the Federal Government collects through the gas tax—erodes the principles of flexibility which were redefined in the Intermodal Surface Transportation Efficiency Act of 1991.

In addition, ISTEA directs the National Highway Traffic Safety Administration to carry out studies to determine the benefits of safety belt and motorcycle helmet use in crashes and the costs associated with resulting injuries. Yet this report was given a time schedule that far exceeds the deadline for States to pass the relevant laws. At minimum, the Federal Government should not penalize the States without providing adequate, updated information.

Mr. President, it is for those reasons that I am again introducing a bill to repeal the penalty provision of section 153 of title 23. My bill retains the grant program as a positive incentive to pass both laws, while also encouraging a high rate of compliance with the laws. Throughout the process of passing the Intermodal Surface Transportation Efficiency Act of 1991, I went on record in opposition to this penalty proposal. I recognize that both bodies of Congress included the safety belt and helmet provisions in their respective bills. However, I strongly believe that Congress should reexamine this attempt to manipulate State governments. During the last legislative session, the State of Minnesota passed a resolution "memorializing Congress to refrain from imposing the States' constitutional authority to regulate traffic and motor vehicle safety within their respective boundaries, and specifically, to refrain from mandating the passage of State laws requiring the use of motorcycle helmets, safety belts, and child restraint systems." I ask unanimous consent that the text of Minnesota Resolution No. 10 (S.F. No. 1778) be included in the RECORD.

The fatality record in Minnesota seems to contradict the argument that mandatory helmet laws are the best way to increase traffic safety of motorcyclists. During the period 1968–77 when Minnesota had a mandatory helmet law, fatalities per 10,000 registered vehicles went up almost every year.

In contrast, the Motorcycle Industry Council rated Minnesota the second safest State in the Nation in which to ride a motorcycle. Minnesota's 1992 fatality rate plummeted to a 25-year low, in spite of doubling the number of licensed motorcyclists. Since record high fatalities were recorded in 1980, Minnesota has experienced a 77-percent reduction in fatalities. This occurred because Minnesota motorcyclists and lawmakers realized that there is no substitute for continued ongoing traffic safety education and tough licensing provisions. Minnesota motorcyclists encouraged the State legislature to enact the toughest licensing standards in the Nation. They have also implemented self-funded comprehensive rider education programs and public awareness programs which have won over 20 national awards and serve as a model for other States.

I would like to encourage my colleagues to closely examine why Minnesota has been able to drastically lower the fatality rate of its motorists to one of the lowest in the Nation. I think they will find it is because Minnesotans know that there is no panacea or easy fix. Minnesotans know that it takes persistent effort in a broad array of traffic safety initiatives to significantly reduce roadway fatalities. Minnesota motorists and motorcyclists have shown that they have a strong commitment to improving traffic safety. They have requested, supported and prodded the Minnesota Legislature to honestly and competently meet their demands for safer roadways. They do it because in Minnesota good behavior is rewarded—not because someone in Washington said they had to do it.

Mr. President, my bill retains the monetary rewards for implementing both laws. It does not penalize, punish or micromanage the State's Federal funds if they choose not to pass either a mandatory safety belt or helmet law. Proponents of the penalty provision will tell you that it is not a mandate. The penalty directs States to spend additional moneys on the section 402 program in exchange for not passing the laws. But, most States already have programs in place. Forcing them to spend more money is only giving public safety offices the green light to come up with ways to spend more money. In fiscal year 1996, Minnesota will be forced to spend over twelve times the amount it spent in fiscal year 1992 on section 402 programs. I am concerned that under those circumstances, the result could be irresponsible spending of scarce transportation dollars. Mr. President, I invite my colleagues to review table A showing the amount of money their State will lose from its transportation programs if this bill is not enacted prior to September 30, 1993. That amount can be compared to table B showing the current amount your State spends on safety programs. I ask unanimous consent that these tables be included in the RECORD.

In closing, I would caution my colleagues that reliance on Federal mandates to traffic safety, such as that embodied in Public Law 102-240, may be counterproductive in the long run. It seems to me that a wiser course of action would be to enlist cooperative support and to harness the creative energies of concerned citizens to work together with the goal of decreasing the number of serious traffic accidents. Consequently, I believe that the Intermodal Surface Transportation Efficiency Act needs to be refocused to solicit teamwork, rather than provoke conflict between Government and citizens, both of whom share a common goal of improved traffic safety.

I ask unanimous consent that the text of the bill be included in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

TABLE A.—U.S. DEPARTMENT OF TRANSPORTATION
FEDERAL HIGHWAY ADMINISTRATION

[Estimated amount of funds for section 153 transfer penalty]

States	Fiscal year 1993 apportionments NHS, STP, CMAQ	Estimated	
		Fiscal year 1995 apportionments 81½ percent	Fiscal year 1996 apportionments 80 percent
Alabama	154,170,650	2,312,560	4,625,120
Alaska	175,680,158	2,635,202	5,270,405
Arizona	114,334,349	1,715,015	3,430,030
Arkansas	85,825,287	1,287,379	2,574,759
California	794,270,585	11,914,059	23,828,118
Colorado	127,097,950	1,906,469	3,812,939
Connecticut	159,508,408	2,392,626	4,785,252
Delaware	48,647,523	729,713	1,459,426
District of Columbia	43,338,163	650,072	1,300,145
Florida	375,902,429	5,638,536	11,277,073
Georgia	236,902,772	3,553,542	7,107,083
Hawaii	92,477,313	1,387,160	2,774,319
Idaho	71,453,247	1,071,799	2,143,587
Illinois	355,432,188	5,331,483	10,662,966
Indiana	187,066,529	2,805,998	5,611,996
Iowa	124,966,720	1,874,501	3,749,002
Kansas	104,058,695	1,560,880	3,121,761
Kentucky	133,652,184	2,004,783	4,009,566
Louisiana	114,008,685	1,710,130	3,420,261
Maine	56,573,535	848,603	1,697,206
Maryland	140,260,031	2,103,900	4,207,801
Massachusetts	109,456,942	1,641,854	3,263,708
Michigan	219,879,599	3,298,194	6,596,388
Minnesota	143,671,496	2,155,072	4,310,145
Mississippi	86,373,606	1,295,604	2,591,208
Missouri	157,720,393	2,365,806	4,731,612
Montana	89,440,421	1,341,606	2,683,213
Nebraska	90,579,354	1,358,690	2,717,381
Nevada	70,674,877	1,060,123	2,120,246
New Hampshire	55,116,812	826,752	1,653,504
New Jersey	216,955,586	3,254,334	6,508,668
New Mexico	87,523,953	1,312,859	2,625,719
New York	428,935,117	6,434,027	12,868,054
North Carolina	212,197,108	3,182,957	6,365,913
North Dakota	71,418,578	1,071,279	2,142,557
Ohio	285,294,140	4,279,412	8,558,824
Oklahoma	115,134,994	1,727,025	3,454,050
Oregon	87,622,810	1,314,342	2,628,684
Pennsylvania	246,490,786	3,697,362	7,394,724
Rhode Island	46,771,686	701,575	1,403,151
South Carolina	118,713,771	1,780,707	3,561,413
South Dakota	72,960,126	1,094,402	2,189,804
Tennessee	158,279,065	2,374,186	4,748,372
Texas	644,629,022	9,669,435	19,338,871
Utah	69,155,819	1,037,337	2,074,675
Vermont	46,872,961	703,094	1,406,189
Virginia	169,516,449	2,542,747	5,085,493
Washington	121,474,907	1,822,124	3,644,247
West Virginia	78,829,715	1,182,446	2,364,891
Wisconsin	152,206,649	2,283,100	4,566,199
Wyoming	68,458,560	1,026,878	2,053,757
Puerto Rico	50,707,286	760,609	1,521,219
Subtotal	8,268,689,999	124,030,150	248,060,700

Note: Fiscal year 1995 and fiscal year 1996 percentages are based on estimates of State apportionments for fiscal year 1993. The actual percentages for fiscal year 1995 and fiscal year 1996 will be based on that year's apportionment which will vary from the amounts above.

Table B.—National Highway Safety Administration Fiscal Year 1993 Limitation on Obligations for the State and Community Highway Safety Program

State:

	Amount
Alabama	1,894,567
Alaska	549,235
Arizona	1,536,291
Arkansas	1,267,250
California	10,558,187
Colorado	1,574,116
Connecticut	1,178,379
Delaware	549,235
District of Columbia	549,235
Florida	4,850,817
Georgia	2,801,254
Hawaii	549,235
Idaho	739,912
Illinois	4,545,298
Indiana	2,380,307
Iowa	1,641,586
Kansas	1,688,142
Kentucky	1,640,058
Louisiana	1,733,926
Maine	549,235

	Amount
Maryland	1,711,805
Massachusetts	2,139,826
Michigan	3,742,135
Minnesota	2,262,573
Mississippi	1,306,395
Missouri	2,441,153
Montana	731,916
Nebraska	1,127,128
Nevada	689,287
New Hampshire	549,235
New Jersey	2,682,857
New Mexico	859,613
New York	6,458,112
North Carolina	2,745,265
North Dakota	788,335
Ohio	4,207,415
Oklahoma	1,756,556
Oregon	1,552,477
Pennsylvania	4,556,566
Rhode Island	549,235
South Carolina	1,538,921
South Dakota	783,739
Tennessee	2,120,274
Texas	7,370,962
Utah	838,115
Vermont	549,235
Virginia	2,422,043
Washington	2,083,339
West Virginia	803,829
Wisconsin	2,297,471
Wyoming	549,235

RESOLUTION NO. 10

Whereas, the Tenth Amendment to the U.S. Constitution, part of the original Bill of Rights, reads as follows, "The powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people"; and

Whereas, the limits on Congress' authority to regulate state activities prescribed by the Tenth Amendment have gradually been eroded and federal mandates to the states in these protected areas have become almost commonplace; and

Whereas, the regulation of traffic and motor vehicle safety laws are constitutionally the province of state, not congressional, authority; and

Whereas, a recently proposed federal mandate would reduce the apportionment of federal highway funds to states which do not enact statutes requiring the use of helmets by motorcyclists and the use of safety belts and child restraint systems by drivers and front seat passengers in automobiles by July 1, 1992; and

Whereas, while the stated goals of this federal mandate, to reduce highway fatalities and injuries through increased use of motorcycle helmets and safety belts, are certainly praiseworthy, it is the opinion of this body that the passage of such legislation by the U.S. Congress would be a blatant transgression upon the state's regulatory authority under the Tenth Amendment: Now, therefore, be it

Resolved by the Legislature of the State of Minnesota, That it urges the Congress to refrain from imposing upon the states' constitutional authority to regulate traffic and motor vehicle safety within their respective boundaries, and specifically, to refrain from mandating the passage of state laws requiring the use of motorcycle helmets, safety belts, and child restraint systems: Be it further

Resolved, That the Secretary of State of the State of Minnesota is directed to prepare certified copies of this memorial and transmit them to the President and Secretary of the United States Senate, the Speaker and Chief Clerk of the United States House of Representatives, and Minnesota's Senators and Representatives in Congress.

This bill was passed in conformity to the rules of each House and the joint rules of the two houses as required by the Constitution of the State of Minnesota.

S. 295

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. USE OF SAFETY BELTS AND MOTORCYCLE HELMETS.

Section 153 of title 23, United States Code, is amended—

(1) by striking subsection (h); and

(2) by redesignating subsections (i) through (k) as subsections (h) through (j), respectively.●

● Mr. KOHL. Mr. President, I am delighted to join with Senator DURENBERGER in introducing this legislation to correct what we see as a flaw in the Transportation bill we passed in 1991.

As my colleagues recall, when we debated the issue of mandatory seatbelt and helmet laws, we pretty much agreed that the Federal Government did not have the right to require States to pass them. But we also agreed that such laws might be desirable. So in the Senate version of the Transportation bill we attempted to persuade States to adopt them. Unfortunately, the final legislation attempted to coerce States into adopting them.

While the goal of the legislation may have been desirable, the tactics are objectionable. In essence, we are going to force States which do not adopt mandatory helmet and seatbelt laws to waste—waste—money, money that neither they nor we have, to the extent that the law now requires spending on education above and beyond desirable and necessary levels, to the extent that the law requires States to divert spending from more critical programs and projects, to that extent we are mandating that money be wasted.

And Mr. President, we cannot afford to do that.

As I said last year, when I drive, I wear my seatbelt; and if I rode a motorcycle, I would wear a helmet. But we all know that, as a Federal Government, we do not have the right or the ability to require States to pass the laws we might like to see in these areas. The Senate version of the legislation, while problematic, at least was acceptable because it sought to persuade States to move in a certain direction; current law coerces them. And that is unacceptable.

Again, I am delighted to join with Senator DURENBERGER in this effort. I congratulate him on his leadership and I look forward to working with him and our colleagues as we seek to find an acceptable way to resolve this problem.●

By Mr. BUMPERS (for himself, Mr. PRYOR, Mr. KERREY, Mr. COCHRAN, Mr. BOND, Mr. WOFFORD, Mr. BOREN, Mr. KOHL, Mr. SHELBY, and Mr. REID):

S. 296. A bill to require the Secretary of Agriculture to submit monthly financial obligation and employment reports to Congress for the Food and Safety and Inspection Service, and for other purposes; to the Committee on Agriculture, Nutrition, and Forestry.

FOOD SAFETY AND INSPECTION SERVICE REPORTS

● Mr. BUMPERS. Mr. President, the meat and poultry industry is one of the largest in the country, with annual retail value of nearly $150 billion in products to American and international consumers. In 1992, approximately 117 million red meat animals and 6.6 billion birds were slaughtered under Federal inspection and products undergoing further processing were reinspected in over 5,000 plants.

Not only is the meat and poultry industry a major player in moving goods through commerce, it also makes a very important contribution to direct employment of American workers. Over 400,000 people are employed in plants under the jurisdiction of Federal inspectors and many thousands of other people are employed in the breeding, raising, and transportation of food animals. In addition, thousands of other people are employed in the storage and distribution of meat and poultry products. Only a few days of industry closure would result in the loss of billions of dollars to the American economy and the disruption of a very large segment of the American work force.

Food safety, rightfully, is one of the most important responsibilities of Federal oversight in consumer affairs. American consumers are afforded the most abundant and the safest variety of food products in the world through no accident. The Food Safety and Inspection Service, an arm of the Department of Agriculture, is charged with the responsibility of closely monitoring activities in meat and poultry slaughter and processing plants across the country through the placement of highly skilled and dedicated men and women who serve as inspectors and veterinary specialists. These people not only assure the availability of safe products, they help assure American consumers that the products they want will be available in a sufficient quantity to meet demand.

The legislation I introduce today will simply provide the Congress with adequate informational tools to keep us better apprised of funding levels and inspection activities of the Food Safety Inspection Service. In the recent past, funding shortfalls have required the passage of emergency supplemental appropriations bills in order to maintain the level of inspectors necessary to meet industry and consumer demand. My legislation will do much to keep us better informed of potential shortfalls in funding and inspector vacancies to help us avoid the problems

of taking emergency actions to keep slaughter and processing lines running, maintain workers on the job, and meet American and international consumers demand for meat and poultry products.

My legislation has the support of the meat and poultry industries and will help the Food and Safety Inspection Service maintain the highest capability possible to meet the demands of food safety for consumers. The safety of our food supply and the security of our work force should demand no less.•

By Mr. STEVENS:

S. 297. A bill to authorize the Air Force Memorial Foundation to establish a memorial in the District of Columbia or its environs; to the Committee on Energy and Natural Resources.

AIR FORCE MEMORIAL ESTABLISHMENT ACT

• Mr. STEVENS. Mr. President, the U.S. Air Force was established as a separate service in 1947. Since that time, the men and women of the U.S. Air Force have distinguished themselves as an integral part of our Nation's defense in times of peace and war. The men and women of the Air Force have demonstrated bravery and effectiveness during such historical events as the Berlin airlift and, most recently, Operation Desert Storm.

The 50th anniversary of the founding of the Air Force will be 1997. Today, I am introducing a bill to authorize the erection of a memorial to the Air Force and to the men and women who have honorably served our country within this extraordinary institution. Congress must begin the process now if a memorial is to be completed in time for the 50th anniversary celebration.

The memorial will also be dedicated to those men and women who served in the Army Air Corps, the predecessors to the Air Force, who fought valiantly in World War I, and provided the Allies with their greatest advantage in Europe and the Pacific during World War II.

This bill requires that funds will be raised privately and expressly prohibits any taxpayer funding for the Air Force Memorial. The process for the establishment of a memorial must be in accordance with all existing standards for erecting such works as laid out in 40 U.S.C. 1001.

I urge my colleagues to assist me in establishing a long awaited monument honoring this great institution and our fellow citizens who have served in the U.S. Air Force.•

By Mr. DECONCINI (for himself, Mr. HATCH, Mr. HEFLIN, Mr. KENNEDY, Mr. KOHL, Mr. LAUTENBERG, Mr. SPECTER, Mr. GRASSLEY, Mr. BROWN, and Mr. DOMENICI):

S. 298. A bill to amend title 35, United States Code, with respect to patents on certain processes; to the Committee on the Judiciary.

THE BIOTECHNOLOGY PATENT PROTECTION ACT

Mr. DECONCINI. Mr. President, I rise to introduce with my colleagues, Senators HATCH, HEFLIN, KENNEDY, KOHL, LAUTENBERG, SPECTER, GRASSLEY, BROWN, and DOMENICI, the Biotechnology Patent Protection Act of 1993. This legislation passed the Senate last year, but unfortunately, the House did not have time to act upon the bill before the 102d Congress adjourned. Representatives BOUCHER and MOORHEAD are introducing a companion version in the House today.

The Biotechnology Patent Protection Act is critical to the continued success of the United States biotechnology industry. The United States is currently the world leader in biotechnology, an industry expected to grow from $2 to $5 billion by the year 2000. In addition to the billions of dollars this field generates for our economy, biotechnology offers a potential panacea to seemingly hopeless problems. Currently, biotechnology researchers are developing new energy sources, cures for cancer and heart disease, and healthier food products.

Patents are the lifeblood of the biotechnology industry. They are used to attract the venture capital necessary to finance research and development. Patents also motivate inventors to devote their energies to the discovery and realization of technological innovations. In order to encourage these scientific breakthroughs, as well as to stimulate commercial development, we need strong patent protection for our innovations. Our current patent system, however, fails to sufficiently safeguard the biotechnology industry.

The Biotechnology Protection Act provides a rather simple solution to this very complex area of law. Specifically, it amends the Patent Code to provide additional patent protection to the biotechnology industry through two provisions. The first provision overrules the troublesome 1985 Federal circuit case of In re Durden, which has been a serious obstacle for the biotechnological industry in obtaining process patent protection. The second provision closes a loophole in the Patent Code which currently permits a competitor to exploit a patented host cell by importing the resulting product into the United States.

In Durden, the Federal Circuit denied a process patent under the nonobvious standard of the Patent Code. The patent applicant in Durden admitted the familiarity of the general nature of the chemical reaction involved in his application, but asserted that because a new compound was produced from a new starting material, a patent should be issued. The Federal circuit disagreed, holding that, in this case, the use of a different starting material in an otherwise known process did not constitute a patentable process. The court indicated that each process patent must be evaluated on a case-by-case basis.

As a result of Durden, the Patent Office now routinely denies process claims, thereby diminishing patent protection in the U.S. biotechnology industry. The Durden decision is exacerbated by its inconsistent application by patent examiners.

Title I of the Biotechnology Protection Act resolves the Durden predicament by utilizing more appropriate criteria for assessing patentability. The bill provides that a biotechnological process of making or using a product will not be considered nonobvious if the starting material or resulting product is novel. Such a provision is necessary to afford predictability to the patent procedure and to ensure equal and adequate access to patent protection.

Title II closes the loophole which currently allows foreign exploitation of patented biotechnological material. Under current law, a U.S. patent holder of a genetically engineered host cell is unable to prevent a competitor from using the patented invention overseas and then exporting the product to the United States to compete with the patentee. Such piracy enables a competitor to circumvent established patent law, encouraging businesses to go overseas to evade U.S. law.

Furthermore, this abuse undermines continued investment in the research and development phase of scientific advancements. Not only may scientists abandon meritorious experiments on patented material they fear will be taken overseas, developed, and imported into the United States, but investors may withdraw financial backing from such projects as well.

Mr. President, this legislation moves U.S. biotechnology in the right direction—forward. It is time to end the uncertainty in this area of law that hinders the essential progress of the biotechnology industry. It is time to stop intellectual property pirates from abridging the spirit of U.S. patent laws. Time and time again, we hear of a U.S. industry losing its global lead to another country willing to provide the tools for that industry to succeed. Time and time again, we have been forced to look back in retrospect, lamenting what little needed to be done to maintain U.S. dominance in a particular high-technology industry. If we act now on this legislation, we will not lose the U.S. lead in biotechnology.

Mr. President, in light of the fact that this bill passed the Senate last Congress, and in light of the urgent need for the protection this bill provides, I would like to move quickly on this legislation. I ask unanimous consent that the full text of the bill be printed in the RECORD at this point.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 298

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

TITLE I—BIOTECHNOLOGICAL PROCESS PATENTS

SEC. 101. CONDITIONS FOR PATENTABILITY; NONOBVIOUS SUBJECT MATTER.

Section 103 of title 35, United States Code, is amended—

(1) in the first unnumbered paragraph by inserting "(a)" before "A patent";

(2) in the second unnumbered paragraph by inserting "(b)" before "Subject matter"; and

(3) by adding at the end thereof the following new subsections:

"(c) Notwithstanding any other provision of this section, a claimed process of making or using a machine, manufacture, or composition of matter is not obvious under this section if—

"(1) the machine, manufacture, or composition of matter is novel under section 102 of this title and nonobvious under this section;

"(2) the claimed process is a biotechnological process as defined in subsection (d); and

"(3)(A) the machine, manufacture, or composition of matter, and the claimed process invention at the time it was made, were owned by the same person or subject to an obligation of assignment to the same person; and

"(B) claims to the process and to the machine, manufacture, or composition of matter—

"(i) are entitled to the same effective filing date; and

"(ii) appear in the same patent application, different patent applications, or patent which is owned by the same person and which expires or is set to expire on the same date.

"(d) For purposes of this section, the term 'biotechnological process' means any method of making or using living organisms, or parts thereof, for the purpose of making or modifying products. Such term includes recombinant DNA, recombinant RNA, cell fusion including hybridoma techniques, and other processes involving site specific manipulation of genetic material.".

SEC. 102. NO PRESUMPTION OF INVALIDITY.

The first unnumbered paragraph of section 282 of title 35, United States Code, is amended by inserting after the second sentence "A claim issued under the provisions of section 103(c) of this title on a process of making or using a machine, manufacture, or composition of matter shall not be held invalid under section 103 of this title solely because the machine, manufacture, or composition of matter is determined to lack novelty under section 102 of this title or to be obvious under section 103 of this title.".

SEC. 103. EFFECTIVE DATE.

The amendments made by this title shall apply to all United States patents granted on or after the date of the enactment of this Act and to all applications for United States patents pending on or filed after such date of enactment, including any application for the reissuance of a patent.

TITLE II—BIOTECHNOLOGICAL MATERIAL PATENTS

SEC. 201. INFRINGEMENT BY IMPORTATION, SALE OR USE.

(a) INFRINGEMENT.—Section 271 of title 35, United States Code, is amended by adding at the end the following new subsection:

"(h) Whoever without authority imports into the United States or sells or uses within the United States a product which is made by using a biotechnological material (as defined under section 154(b)) which is patented in the United States shall be liable as an infringer if the importation, sale, or use of the product occurs during the term of such patent.".

(b) CONTENTS AND TERM PATENT.—Section 154 of title 35, United States Code, is amended—

(1) by inserting "(a)" before "Every";

(2) by striking out "in this title," and inserting in lieu thereof "in this title (1)";

(3) by striking out "and, if the invention" and inserting "(2) if the invention";

(4) by inserting after "products made by that process," the following: "and (3) if the invention is a biotechnological material used in making a product, of the right to exclude others from using or selling throughout the United States, or importing into the United States the product made or using such biotechnological material,"; and

(5) by adding at the end thereof the following:

"(b) For purposes of this section, the term 'biotechnological material' is defined as any material (including a host cell, DNA sequence, or vector) that is used in a biotechnological process as defined under section 103(d).".

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendment made by this section shall take effect six months after the date of enactment of this Act and, subject to paragraph (2), shall apply only with respect to products made or imported after the effective date of the amendments made by this section.

(2) EXCEPTIONS.—The amendments made by this section shall not abridge or affect the right of any person, or any successor to the business of such person—

(A) to continue to use, sell, or import products in substantial and continuous sale or use by such person in the United States on the date of enactment of this Act; or

(B) to continue to use, sell, or import products for which substantial preparation by such person for such sale or use was made before such date, to the extent equitable for the protection of commercial investment made or business commenced in the United States before such date.

Mr. HATCH. Mr. President, today I am pleased to cosponsor the Biotechnology Patent Protection Act of 1993 with my colleague, Senator DECONCINI.

This legislation is the result of a great deal of work by numerous Members of Congress over the past two Congresses. The problem it addresses was best summarized by the Council on Competitiveness in a report it issued nearly 2 years ago:

The uncertainties in intellectual property rights for innovations in the biotechnology area continue to hamper the industry. Changes in U.S. law have been suggested as a way of improving patent protection. Legislation has been introduced to overturn a court case (In re Durden) that suggests that use of a novel starting material in combination with a known chemical process is not eligible for a process patent. The application of Durden in the biotechnology area could deny protection to innovations that only can be protected through process patents. If Durden were overturned, patenting these processes would permit the patent holder to exclude the importation into this country of a product produced by using a patented biotechnological material.

The administration should support passage of legislation to provide necessary process patent protection for products, such as those in the biotechnology area, that can be protected only through process patents.

The key elements of this legislation are the protection of major scientific breakthroughs involved in the methods of making and using new products. The best examples of the types of processes that will benefit from this legislation are those that arise in the biotechnology industry.

As noted by the Council on Competitiveness, for a variety of reasons, the patent position of the biotechnology industry is not as strong as that available to traditional pharmaceuticals. This means that under current law it is possible for a major innovation, such as creation of the first commercially effective process for making a recombinant human therapeutic, to be without adequate patent protection. In some instances there may be no product patent protection available for the end product, no process protection for the method of making the product, and no ability to prevent foreign manufacture of the end product using the patented intermediate or host cell. In biotechnology, the use of an intermediate, most frequently a host cell or organism, is the modern equivalent of creating a miniature factor for the production of a product. Thus, the inability to prevent the transportation of a patented host cell offshore and the subsequent importation of an end product is a serious defect in our current patent system. Our bill addresses this problem directly by extending process patent protection to cover the inventor's process of making the product. Such process patents may be enforced under the current law to stop importation of a product made by a patented process. Thus, this bill will give inventors the full promise of the process patent amendments Senator DECONCINI and I authored in the 1988 omnibus trade bill.

The other important reason that this bill makes sense is that it will produce an international patent norm that no longer leaves our inventors at a competitive disadvantage. Under current law, it is possible for innovators to face unfair foreign competition from parties who would be barred from using a patented host cell in the United States. This legislation will correct that anomaly by granting process patent protection. In my view, this approach is preferable to attempting the creation of a new set of remedies for the making, using, or selling of products of host cells. This bill removes a court-created barrier resulting from an anomalous interpretation of the patent laws. Removal of this barrier will result in: First, process patent allow-

ance; and second, application of existing process patent laws to enforce the newly allowed process patents to stop the importation into the United States of products made outside the United States by the patented process.

By Mr. RIEGLE (for himself, Mr. JEFFORDS, Mr. SIMON, Mr. LEVIN, Mrs. BOXER, Ms. MOSELEY-BRAUN, and Mr. DODD):

S. 299. A bill to amend the Housing and Community Development Act of 1974 to establish a program to demonstrate the benefits and feasibility of redeveloping or reusing abandoned or substantially underutilized land in economically and socially distressed communities, and for other purposes; to the Committee on Banking, Housing, and Urban Affairs.

ABANDONED LAND REUSE ACT OF 1993

• Mr. RIEGLE. Mr. President, today I rise to introduce the Abandoned Land Reuse Act of 1993.

This legislation is a more comprehensive version of S. 3164, that I introduced last session along with Senators JIM JEFFORDS and JOE LIEBERMAN. The legislation addresses a basic issue of community development and economic policy in this country; what to do with abandoned industrial and commercial land. The Abandoned Land Reuse Act of 1993 is different from S. 3164 in a number of respects, most notably in providing more assistance to distressed neighborhoods and creating new jobs where old jobs have been lost.

Abandoned industrial and commercial sites are a major problem for many communities. Taking steps to reuse and rehabilitate these areas will increase the tax base, rehabilitate distressed neighborhoods, and provide a new start for communities that are currently locked in economic decline, and lack the resources to address these and other key issues.

The legislation authorizes grants by the Secretary of Housing and Urban Development to local governments or local nonprofit community development corporations to carry out a program to redevelop or rehabilitate abandoned industrial and commercial facilities that are located in economically and socially distressed communities. This is especially important where the existing owners of the facilities lack the resources to accomplish the redevelopment or rehabilitation.

The Abandoned Land Reuse Act of 1993 authorizes the appropriation of $100 million for each of the next 3 fiscal years. The legislation enables the HUD Secretary to approve the demonstration grant proposals or to delegate this responsibility to a State's Governor with respect to demonstration project sites in that State. The grants would cover 75 percent of the costs of site redevelopment or rehabilitation and would be subject to repayment, if the grantee recovered from site disposition an amount exceeding its 25 percent share of the costs, or the grantee failed to carry out the redevelopment or rehabilitation project in a timely manner.

For several years now the U.S. Congress has been debating the need to reinvest in the infrastructure that supports the efficient operation of our economy.

This country cannot afford to abandon the sites that have employed thousands of our Nation's workers. We do not have the capital to be so extravagant. We also cannot ignore the impact upon our economy of the large-scale abandonment of large portions of our communities to nonproductive use.

Additionally, this legislation responds to our need to reinvest in our Nation. In my home State of Michigan, the marketability and reuse of thousands of sites are impaired by past industrial or commercial land use practices. These sites, which are in some kind of economic limbo, need rehabilitation to make them viable for reuse. This legislation provides assistance for that economic and community regeneration.

In fact, the Michigan State Legislature has created a special committee to consider what initiatives the State might take to facilitate the reuse of these sites for contemporary uses that will attract or retain private employers. Other levels of government in Michigan and other Michigan organizations, including the Southeast Michigan Council of Governments and the Michigan Municipal League, are similarly focused on these issues.

Further, Michigan is not alone in its efforts. States, cities, and local community development organizations throughout America—from the west coast to the Midwest and east coast, from the San Francisco Bay Area and Los Angeles, to Detroit, Chicago, Toledo, Baltimore, Cleveland, Bridgeport, and Newark—are similarly seeking to reuse abandoned industrial sites and facilities.

The legislation I am introducing today will complement and encourage these efforts at the State and local level and enhance the capacity of governmental entities and local community development corporations to respond to this very pressing demand to act. Removing the constraints on reuse of those facilities or sites improves the economic prospects of their communities' residents—particularly the disadvantaged and chronically unemployed.

This focus is good policy from many points of view—whether considering economic, employment, community development, housing, public health, environmental, or other needs.

Mr. President, the reuse of abandoned industrial and commercial sites in our Nation's distressed communities can create significant economic opportunities for the benefit of their residents. It will create significant job training and employment opportunities—both to achieve the removal of existing constraints on reuse and redevelopment as well as to conduct the new economic activities attracted to the sites or adjacent property.

I am very interested in the job training opportunities that can result from the initiatives that this legislation is intended to stimulate. I mean to work with my colleagues to identify how best to maximize these opportunities.

Land reuse has benefits similar to the reuse of other resources in limited supply. This country is becoming more aware of the need to recycle newspapers, glass bottles, aluminum cans, and other materials and products. Reusing our land and the very substantial public and private utilities and other infrastructure that have improved the value of that land is consistent with this contemporary ethic. Our communities continually have to contend with responding to new realities that alter the nature of their economic base. The changes affecting our Nation's economy today are particularly wrenching. They demand a renewed public effort to assist our communities to meet the challenge.

Mr. President, a number of individuals representing public and private organizations have contributed to the development of this legislation and support its purpose and concept.

Members of my staff have been working closely with the staffs of Senators BAUCUS and LAUTENBERG to fashion legislation that we can mutually support. I recognize the interest of these Senators BAUCUS and LAUTENBERG in facilitating achievement of the objectives of this legislation. I am willing to work closely and cooperatively with my colleagues and the Clinton administration to develop legislation that is mutually acceptable to all concerned.

Mr. President, I have attached to my statement a brief summary of the purposes and provisions of this bill and ask unanimous consent that it and the text of the bill be reprinted in the CONGRESSIONAL RECORD at the conclusion of my remarks.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

S. 299

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION. 1. ABANDONED LAND REUSE ACT OF 1993.

The Housing and Community Development Act of 1974 (42 U.S.C. 5301 et seq.) is amended by adding at the end the following new title:

"TITLE IX—REDEVELOPMENT OR REUSE OF ABANDONED LAND

"SEC. 901. SHORT TITLE.

"This title may be cited as the 'Abandoned Land Reuse Act of 1993'.

"SEC. 902. FINDINGS.

"The Congress finds that—

"(1) past uses of land in the United States for industrial and commercial purposes or the conduct of other economic activities have created many sites throughout the United States that are now abandoned or substantially underutilized;

"(2) the abandonment or substantial underutilization of the sites referred to in paragraph (1) contribute substantially to the economic and social distress of communities in large portions of the population, including poor and unemployed individuals and disadvantaged population groups, have concentrated;

"(3) the abandonment or substantial underutilization of the abandoned sites impairs the ability of the Federal Government and the governments of States and political subdivisions of States to provide employment opportunities for, and improve the economic welfare of, the people of the United States and the poor, unemployed, and disadvantaged, in particular;

"(4) the abandonment or substantial underutilization of the abandoned sites results in the inefficient use of community development facilities and related public services, and extends conditions of blight in local communities;

"(5) the manner in which—

"(A) the population of the United States is distributed; and

"(B) communities accommodate the growth of the national economy;

affects the employment opportunities, availability of capital to provide economic opportunities, social conditions, and other important conditions of each such community;

"(6) the private market demand for abandoned sites has been reduced or eliminated;

"(7) the capital available for the redevelopment or reuse of abandoned sites may be limited;

"(8) cooperation among Federal agencies and the departments and agencies of States and political subdivisions of States is necessary to accomplish timely redevelopment or reuse of abandoned sites;

"(9) in addition, cooperation between the departments and agencies referred to in paragraph (8) and private parties is necessary to accomplish the objective referred to in paragraph (8); and

"(10) there is a need for a program to demonstrate the public purposes and benefits of the redevelopment or reuse of abandoned sites.

"SEC. 903. DEFINITIONS.

"As used in this title:

"(1) ABANDONED SITE.—The term 'abandoned site' means a facility or a combination of geographically or economically related facilities within the same unit or immediately contiguous units of general local government—

"(A) that is no longer operating or is so substantially underutilized as to provide only marginal employment opportunities;

"(B) that is located within a community that suffers from economic and social distress measured by factors referred to in section 907(a)(4);

"(C) that has one or more conditions, constraints, or characteristics (other than only being a type of facility with respect to which market supply exceeds demand) that are detrimental to the public health, safety, or welfare and, in the absence of the assistance under this title, prevent or materially discourage the timely redevelopment or reuse of a facility or real property immediately adjacent to the facility for a use or uses that include the provision of employment opportunities in accordance with applicable community development strategies; and

"(D) with respect to which a person referred to in section 910(a) is unable to fund or finance the full amount of the cost of a reuse action.

"(2) FACILITY.—The term 'facility' means an improved or previously improved site or area, or a surface or subsurface improvement to a site or area, including a building, structure, installation, fixture, or equipment on or within the site, that has been used primarily for an industrial or commercial use.

"(3) GOVERNOR.—The term 'Governor' means the Governor of a State, or the Governor's designee.

"(4) LOCAL COMMUNITY DEVELOPMENT ORGANIZATION.—The term 'local community development organization' means a nonprofit organization (as defined in paragraph (7)) that—

"(A) has a history of serving the needs of residents of the local community affected by an abandoned site;

"(B) maintains accountability to persons of low-income in a local community through significant representation on the governing board of the organization, and such other means as are appropriate; and

"(C) has the institutional and administrative capacity for carrying out activities assisted under this title (as determined by the Secretary).

"(5) LOCAL GRANTEE.—The term 'local grantee' means a local community development organization or unit of general local government.

"(6) PERSONS OF LOW INCOME.—The term 'persons of low income' has the meaning provided the term under section 102(20).

"(7) NONPROFIT ORGANIZATION.—The term 'nonprofit organization' means any private, nonprofit organization (including a State or locally chartered, nonprofit organization)—

"(A) that is organized under State or local laws;

"(B) with respect to which no portion of the net earnings inure to the benefit of a member, founder, contributor, or individual associated with the organization;

"(C) that complies with standards of financial accountability that the Secretary determines to be acceptable; and

"(D) that carries out activities related to the retention or expansion of employment opportunities for, and improvement of economic and social conditions of, persons of low income.

"(8) REUSE ACTION.—The term 'reuse action' means an action that makes such physical changes in, or improvements or additions to, an abandoned site so as to enable the timely redevelopment or reuse of the site or real property immediately adjacent to the site. Such term shall include the clearance, demolition, or rehabilitation of the site. Such term shall not include the construction of new buildings on the site.

"(9) SECRETARY.—The term 'Secretary' means the Secretary of Housing and Urban Development.

"(10) STATE.—The term 'State' has the meaning provided the term under section 102(a)(2).

"(11) UNIT OF GENERAL LOCAL GOVERNMENT.—The term 'unit of general local government' has the meaning provided the term in the first sentence of section 102(a)(1).

"SEC. 904. DEMONSTRATION PROGRAM.

"(a) IN GENERAL.—The Secretary shall select appropriate States in which to establish and carry out either—

"(1) a program to provide grants to States to establish a State program to provide grants to local grantees; or

"(2) a direct grant program to provide grants to local grantees,

for the purpose of carrying out the demonstrations described in subsection (b).

"(b) PURPOSE.—The purpose of the programs authorized by subsection (a) is to demonstrate—

"(1) the economic feasibility of redevelopment or reuse of abandoned sites;

"(2) the employment benefits, economic benefits, social benefits, and such other benefits to distressed communities that may occur as a result of focusing financial resources and cooperative action on the redevelopment or reuse of abandoned sites;

"(3) the beneficial impacts on patterns of community development and use of public resources of redevelopment or reuse of abandoned sites; and

"(4) the feasibility of timely, cooperative action—

"(A) among Federal agencies and departments and agencies of States and political subdivisions of States that have jurisdiction over the redevelopment or reuse of abandoned sites; and

"(B) between the agencies and departments referred to in subparagraph (A) and private parties.

"(c) ALLOCATION OF FUNDS.—The Secretary shall allocate funds made available pursuant to this title among the States or to local grantees. In allocating the funds, the Secretary shall take into account—

"(1) the relative commitment of a State and local grantees to achieving successfully the demonstrations described in subsection (b) measured by factors that include that referred to in section 907(a)(7);

"(2) the relative number of abandoned sites in the State;

"(3) the need to allocate funds in amounts that will contribute to achieving successfully the demonstrations described in subsection (b); and

"(4) the desirability of carrying out a variety of demonstration projects with respect to the location, characteristics, and issues addressed by the projects, and the types of participants associated with the projects.

"(d) SCOPE OF PROGRAM.—

"(1) IN GENERAL.—In carrying out the demonstration program established under subsection (a), the Secretary may award a grant to a State pursuant to section 905 or to a local grantee that submits an approved application to the Secretary pursuant to paragraph (2).

"(2) GRANT APPLICATION.—An application for a grant under this section shall include a proposal for a reuse action for the redevelopment or reuse of an abandoned site, and shall be in such form as the Secretary determines to be appropriate.

"(3) COMPETITIVE SELECTION PROCEDURE.—Each grant made under this title by the Secretary or a Governor to a State or local grantee shall be made on the basis of an open and competitive selection procedure approved by the Secretary. In making a grant to a local grantee, the Secretary shall conduct a selection procedure on a State-by-State basis.

"(4) SELECTION OF SITES BY GOVERNOR.—If a State establishes a State demonstration program that is approved in accordance with section 905, the Governor shall select the abandoned sites to receive assistance under the grant program. In carrying out the demonstration program, the Governor may act through appropriate officials of the State.

"(5) GRANT AWARDS.—Except as provided in paragraph (6), the aggregate amount of grants awarded for reuse actions at an abandoned site shall not exceed an amount equal to 75 percent of the total eligible costs of carrying out a reuse action at the abandoned site. Each local grantee that receives a grant award under this title shall be required to pay a non-Federal share in an amount equal to 25 percent of the total eligible costs of carrying out the reuse action at the abandoned site that is the subject of the grant award.

"(6) EXCEPTION.—Subject to sections 906 and 909, the Secretary (or in the case of a State demonstration program under section 905, the Governor) may fund up to 100 percent of the total eligible costs of carrying out a reuse action at an abandoned site if the Secretary (or the Governor) obtains satisfactory assurances from the grant recipient that—

"(A) a transfer of the abandoned site will occur as part of the redevelopment or reuse of the site;

"(B) the net proceeds realized from the transfer of the site will reasonably approximate at least 25 percent of the eligible costs of carrying out a reuse action at the site; and

"(C) an amount reasonably approximating 25 percent of the eligible costs referred to in subparagraph (B) from the net proceeds referred to in subparagraph (B), will be paid promptly upon receipt of the proceeds by or on behalf of the grant recipient to the Secretary (or the Governor).

"SEC. 905. DELEGATION OF IMPLEMENTATION TO STATE DEMONSTRATION PROGRAM.

"On a State-by-State basis, the Secretary may, in lieu of awarding grants to individual local grantees, award a grant to a State that submits an approved application to the Secretary to conduct a State demonstration program to carry out the demonstrations described in section 904(b). Subject to the limitations referred to in section 904(d), under a State demonstration program, the Governor of a State shall have the authority to select abandoned sites and allocate assistance from amounts awarded to the State pursuant to this section.

"SEC. 906. FUNDING.

"(a) IN GENERAL.—Payment of the non-Federal share under section 904(d)(5) may be made from funds from any non-Federal source, and may include services or equipment necessary to carry out the reuse action.

"(b) AVOIDANCE OF WINDFALL FROM GRANT AWARD.—

"(1) IN GENERAL.—A local grantee, shall, as a condition to receiving a grant award, enter into an agreement with the Secretary (or in the case of a State demonstration program under section 905, the Governor) that requires the payment of an amount specified in paragraph (2) to the Secretary (or the Governor) by the local grantee of any amount of compensation that the local grantee may recover from another person as compensation for the cost of carrying out a reuse action at the abandoned site that is the subject of the grant award.

"(2) AMOUNT OF PAYMENT.—The amount of payment described in this paragraph shall be—

"(A) in addition to the amount required to be paid pursuant to section 904(d)(6); and

"(B) an amount equal to 85 percent of any amount by which the amount recovered (net of recovery costs) exceeds the non-Federal share of the local grantee.

"(c) AVOIDANCE OF WINDFALL WHERE LOCAL GRANTEE IS NOT SITE OWNER.—In the event that—

"(1) an abandoned site that is the subject of a grant award under this title is not owned by the local grantee that receives the award, or

"(2) an action is taken with respect to an abandoned site to enable the reuse or redevelopment of real property immediately adjacent to the abandoned site, and the local grantee does not own the adjacent site,

the local grantee shall be required, as a condition of receiving the grant award, to enter into an agreement that is satisfactory to the Secretary with the owner of the site or adjacent site. The agreement shall ensure that the owner of the site or adjacent site will not realize a windfall from the assistance provided under the grant, and the local grantee will be able to meet the requirements of this title.

"(d) OTHER RECOVERY OF FEDERAL ASSISTANCE.—

"(1) IN GENERAL.—

"(A) AMOUNT.—An agreement referred to in subsection (b)(1) shall specify that as a condition of receiving a grant award under this title, the grant recipient shall be required to pay to the Secretary (or the Governor) the sum of—

"(i) the amount of the grant award; and

"(ii) the amount of interest accrued on the amount referred to in clause (i) from the date of the awarding of the grant (at a rate determined by the Secretary)

if a condition described in clause (i) or (ii) of subparagraph (B) is met.

"(B) FAILURE TO INITIATE.—If, with respect to the abandoned site that is the subject of the grant—

"(i) a reuse action has not been initiated by 1 year after the date that the grant is awarded; or

"(ii) the redevelopment or reuse has not been completed in a timely manner (as determined by the Secretary, or, in the case of a State demonstration program under section 905, the Governor),

the grant recipient shall be required to make a payment pursuant to subparagraph (A).

"(2) TIMING OF REPAYMENT.—A repayment referred to in paragraph (1) shall be due upon notice to the grant recipient by the Secretary (or the Governor) that a condition described in clause (i) or (ii) of paragraph(1)(B) has been met.

"(3) WAIVER.—The Secretary (or the Governor) may waive the requirement for repayment under paragraph (1) or may require only partial payment of the amount specified in paragraph (1) if the Secretary, (or the Governor) determines that—

"(A) the grant recipient acted in a manner consistent with the requirements of section 904(b); and

"(B) exigent circumstances contributed to the delay.

"(e) USE OF RECOVERED FUNDS.—The Secretary (or the Governor) may use funds recovered pursuant to this section to make additional grant awards in accordance with this title. The Governor may issue an additional grant award with funds recovered pursuant to this section without regard to the requirement for preapproval by the Secretary under section 905.

"SEC. 907. CRITERIA FOR SITE SELECTION.

"(a) IN GENERAL.—The Secretary (or in the case of a State demonstration program under section 905, the Governor), after receiving completed applications for grant awards under this title, shall select abandoned sites and allocate awards. In making the grant awards, the Secretary (or the Governor) shall take into account the following criteria:

"(1) The extent to which economic, social, and such other benefits of the redevelopment or reuse of the site as the Secretary (or the Governor) determines to be appropriate, including the employment and job training opportunities, and other related benefits to persons of low income who are residents of the local community in which the site is located, are likely to exceed the costs of the redevelopment or reuse of the site. In determining the benefits, the Secretary (or the Governor) shall consider the amount of job opportunities to be retained or created, expected increases in economic activity within the community, expected increases in local tax revenue, capital resources to be conserved, and such other public resources as the Secretary (or the Governor) determines will be conserved.

"(2) The extent of need for assistance under this title to fund a reuse action.

"(3) The extent of contribution from non-Federal sources, including capital investment by private parties, expected to occur in connection with the redevelopment or reuse of the site.

"(4) The degree of economic and social distress of the local community in which the site is located, determined by considering the amount of loss of community employment in the industrial sector, the rate and period of unemployment, the relative per capita income of local community residents, any decline in economic activity, any population loss or growth that is disproportionate to local economic opportunity, and such other related factors as the Secretary determines to be appropriate.

"(5) The degree of cooperation among appropriate Federal agencies and departments and agencies of relevant States and political subdivisions of the States, as well as between the departments and agencies and private parties.

"(6) Whether the redevelopment or reuse of the site will be achieved in a timely manner.

"(7) Whether and to what extent the State or unit or units of general local government in which the site is located have established an ongoing program or programs to facilitate the redevelopment or reuse of abandoned sites.

"(8) Such other factors as the Secretary considers relevant to the purposes of the program authorized by this title.

"(b) PRIORITY.—The Secretary (or in the case of a State demonstration program under section 905, the Governor) shall give the greatest priority to the criteria referred to in paragraphs (1) through (7) of subsection (a), and shall give an equal degree of priority to each criterion referred to in paragraphs (1) through (7) of subsection (a).

"SEC. 908. FEDERAL FACILITIES EXCLUDED.

"The Secretary (or in the case of a State demonstration program under section 905, the Governor) may not award a grant under this title for a reuse action on a site controlled by the Federal Government.

"SEC. 909. ELIGIBLE COSTS.

"(a) IN GENERAL.—Administrative and nonadministrative costs for a reuse action carried out pursuant to a grant program under section 904 or a State demonstration program under section 905 shall constitute eligible costs.

"(b) NONADMINISTRATIVE COSTS DEFINED.—For the purposes of this section, the term 'nonadministrative costs' shall include the cost of—

"(1) identifying the probable extent and nature of, and preferred manner of carrying out, a reuse action at an abandoned site;

"(2) fees relating to any application for approval by a Federal agency or a department

or agency of a State or a political subdivision of a State, that is required and necessary to carry out a reuse action at an abandoned site; and

"(3) implementing a reuse action.

"(c) ADMINISTRATIVE COST LIMITATION.—Not more than 10 percent of the amount of a grant award under this title may be used for administrative costs.

"SEC. 910. LIABILITY UNDER OTHER LAW; AVOIDANCE OF WINDFALL.

"(a) LIABILITY UNDER OTHER LAW.—Nothing in this title is intended to relieve any person who had an interest in an abandoned site prior to the initiation of a reuse action that is the subject of grant award under this title from liability under, or other requirements of, any other provision of law.

"(b) AVOIDANCE OF WINDFALL.—The Secretary (or in the case of a State demonstration program under section 905, the Governor) shall implement a grant program under this title in a manner that does not—

"(1) relieve from liability under any other law any person referred to in subsection (a); and

"(2) reduce the incentive of any such person to participate in funding the non-Federal share required under section 906.

"(c) STATUTORY INTERPRETATION.—Nothing in subsection (b) is intended to prevent a local grantee who acquires an abandoned site solely for the purpose of carrying out a proposal to redevelop or reuse the site from obtaining assistance under this title.

"SEC. 911. EVALUATION AND REPORT.

"(a) EVALUATION.—

"(1) IN GENERAL.—Not later than December 31, 1995, the Secretary shall conduct an initial evaluation of the grant program established under section 904 and any State demonstration program established under section 905. The evaluation shall be based on information that is available at the time of the evaluation.

"(2) DATA COLLECTION.—The Secretary (or in the case of a State demonstration program under section 905, the Governor) shall require that as a condition to receiving a grant under this title, each grant recipient shall submit to the Secretary data that indicate the actual costs, benefits, sources and uses of funds, the results of an assisted redevelopment or reuse project, and such other data as the Secretary determines to be necessary for the evaluation referred to in paragraph (1).

"(b) CONFIDENTIALITY OF DATA COLLECTED.—The Secretary shall maintain confidentiality of data collected from grant recipients in accordance with any applicable law.

"(c) REPORT.—Upon completion of the evaluation referred to in subsection (a), but not later than December 31, 1995, the Secretary shall submit a report to the Congress containing the findings and recommendations of the Secretary.

"(d) USE OF CONTRACTORS.—The Secretary may, in accordance with any applicable law, enter into agreements with such private contractors (including institutions of higher education), as the Secretary determines necessary for the preparation of the report referred to in subsection (c).

"SEC. 912. TECHNICAL ASSISTANCE.

"(a) IN GENERAL.—The Secretary may use up to 5 percent of any amount appropriated to implement this title to fund technical assistance grants by the Secretary (or in the case of a State demonstration program under section 905, the Governor) to local grantees to facilitate their participation in the demonstration program established by this title and their successful achievement of the purposes of this title.

"(b) PURPOSES.—A local grantee may use a grant under this section to pay for up to the full amount of its costs—

"(1) to identify the probable extent and nature of, and preferred manner of carrying out, a reuse action at an abandoned site;

"(2) to identify potential non-Federal sources of capital for the redevelopment or reuse of an abandoned site;

"(3) to determine the means of implementing in connection with a reuse action a job training program that benefits persons of low-income who are residents of the local community in which an abandoned site is located;

"(4) to identify public agencies cooperation with which would be necessary to carry out a reuse action; or

"(5) for such other purposes approved by the Secretary as directly relate to the local grantee's successfully organizing the human and other resources and cooperative action necessary to carrying out a reuse action.

"(c) REPAYMENT OBLIGATION.—If a local grantee obtains a technical assistance grant pursuant to this section and subsequently obtains a grant to carry out a reuse action under this title, the grant recipient's payment obligation under section 906(d) shall include the amount of the technical assistance grant.

"SEC. 913. REGULATIONS.

"Not later than 180 days after the date of enactment of this title, the Secretary shall issue such rules and regulations as are necessary to carry out this title.

"SEC. 914. AUTHORIZATION OF APPROPRIATIONS.

"There are authorized to be appropriated to the Department of Housing and Urban Development for the purposes of carrying out this title $100,000,000 for each of the fiscal years 1994, 1995, and 1996. Such sums shall remain available until expended.".

SUMMARY OF ABANDONED LAND REUSE ACT OF 1993

The Abandoned Land Reuse Act of 1993 establishes a program to reuse and rehabilitate abandoned industrial and commercial sites in a manner that creates jobs, increases the tax base, rehabilitates distressed neighborhoods, and provides a new start to communities that are currently locked in economic decline, and lack the resources to address these and other key issues.

The bill creates a program to demonstrate the benefits of reusing these sites and facilities where feasible rather than wasting the substantial capital resources invested in public and private infrastructure serving the sites and rather than consuming additional capital and land resources to provide employment sites elsewhere. The program is designed to encourage Federal, State, and local governmental cooperative action and public/private partnerships that will induce private investment and create new employment and job training opportunities in our Nation's distressed communities.

Grant recipients are required to contribute at least 25% of the costs of making sites marketable. Eligible grantees are general purpose local governments and local, nonprofit community development corporations. Grantees may satisfy their contribution following site redevelopment or reuse and disposition of a site or adjacent property. Non-Federal third parties may help grantees satisfy their requirement through contributions of financial assistance, or necessary services or equipment.

The bill authorizes the Secretary of Housing and Urban Development (the "Secretary") to select sites for assistance, or on a State-by-State basis to delegate site selection and related funding authority to a State's Governor, who would be expected to act through the appropriate State agency or agencies.

After the conduct of an open, competitive selection process, the Secretary or State Governor would select demonstration sites nominated by local grant applicants based upon criteria that require:

An economically viable redevelopment or reuse project;

Significant leveraging of the Federal grant with non-Federal funds;

Site location in areas suffering economic and social distress;

Intergovernmental agency cooperation and public/private partnership;

Commitment of State and local governments to programs that facilitate site redevelopment or reuse;

Consideration of need for assistance to achieve site reuse;

Consideration of job training and employment opportunities generated by the project; and

Timely site redevelopment or reuse.

The demonstration program applies to sites other than federally owned facilities.

The bill also provides that up to 5% of the funds appropriated to implement the program can be used for technical assistance grants to facilitate local grantees' participation in the program and their successful achievement of program purposes. Grant-eligible activities include undertaking assessments of site conditions and determining appropriate means of implementing a job training program in connection with a redevelopment or reuse project.

The bill requires the Secretary or State Governor to implement the program in a manner that does not relieve site owners from liability under Federal, State, or local law relating to site conditions and does not undermine such parties' incentive to participate in funding the non-Federal contribution to site redevelopment or reuse.

Grant recipients also would be obligated to repay:

Up to 85% of Federal grant funds, if grant-funded costs were recovered from parties responsible for remedying site conditions under applicable law or with an interest in a site or adjacent property following site redevelopment or reuse; or

The full grant amount plus interest, if approved redevelopment or reuse of a site were not initiated and implemented in a timely manner. In the latter event the Secretary or State Governor would have authority to waive repayment in certain, limited circumstances.

The bill provides for the authorization of $100 million for each of the next three fiscal years, and requires the Secretary to submit by December 31, 1995, an initial report evaluating the results of the demonstration program.

Mr. JEFFORDS. Mr. President, I am pleased to cosponsor the Abandoned Land Reuse Act of 1993, with my distinguished colleague, the chairman of the Committee on Banking, Housing, and Urban Affairs.

We hope our bill will promote the reuse of abandoned manufacturing facilities. These idle facilities—mining operations in the West, textile mills in the South, steel mills in the Northeast, metal plating and chemical facilities from the Great Lakes to the Gulf of

Mexico, machine tool plants in my State of Vermont—represent a tremendous waste of physical resources and capital. And too often, the abandonment of these facilities and sites has led to the deterioration of the surrounding communities, many of which are located in our inner cities. In many instances, the facility was the community's sole or largest employer.

I know of several instances in Vermont in which private parties and public or nonprofit community development organizations express interest in remediating abandoned sites and facilities but face liability concerns and financial disincentives. A wooden toy manufacturer, for instance, recently attempted to move into a Poultney facility once used for manufacturing mercury thermometers. Liability concerns prompted the manufacturer to move elsewhere; the property remains vacant.

The Southern Vermont Development Council [SVDC] has remodeled mill buildings at the Holden-Leonard Mill complex in Bennington. Holden-Leonard wove wool into cloth at the site from 1865 to 1949 and employed one-quarter of the city's population at its peak early in the century. SVDC is struggling to find buyers for its industrial condominiums. Again, liability is a concern.

A happier example of what might be concerns the Howe Center in Rutland. Howe Scales—an historic industrial property—now houses a multiple-use complex whose tenants include a furniture manufacturer, an auto body shop, and classrooms for an adult education program.

The bill Senator RIEGLE and I are introducing builds upon the pioneering work the Northeast-Midwest Institute has done to promote industrial facility reuse. It convened a conference on the subject in 1991 and published "New Life for Old Buildings," which contains scores of successful reuse case studies from around the Nation, last year. Last week, the Institute and the Northeast-Midwest Congressional Coalition held a hearing on the subject in Chicago. House Members heard from panels of officials representing low income, environmental, and community development interests.

I successfully offered an amendment to the Intermodal Surface Transportation Efficiency Act of 1991 [ISTEA] directing the Department of Transportation [DOT] to conduct a study of the fiscal, physical, and regulatory impediments to reuse. Former Transportation Secretary Andrew Card informed me late last year that DOT—in addition to conducting the study—will attempt to compile an inventory of abandoned facilities nationwide. I anxiously await the report, which should be completed this spring or early summer. It will help us determine the extent of the problem.

Mr. President, this is not a new Superfund program. National Priority List [NPL] sites are excluded. So, too, are sites that qualify for Federal assistance under the underground storage tank trust fund. The bill also excludes Department of Energy, Department of Defense, and other Federal sites.

The core purpose of our bill is to promote the remediation of non-NPL, non-Federal abandoned manufacturing sites so that they can be returned to productive use. Why encourage urban sprawl and the problems associated with it by developing new sites? Why not get to work remediating abandoned sites? Abandoned manufacturing facilities have tremendous potential. Infrastructure—roads, sewers, utilities, rail siding, and the like—already is in place. Surrounding communities usually are economically distressed and hungry for good manufacturing jobs. We have to reinvest in our cities, in our manufacturing, and in our greatest resource, people. The measure that Senator RIEGLE and I are introducing today is a start in the long process of bringing these sites and communities back to life.

Mr. President, I have attached to my statement an executive summary of the Northeast-Midwest Institute's report, "New Life for Old Buildings." I ask unanimous consent that it be reprinted in the CONGRESSIONAL RECORD following my remarks.

There being no objection, the summary was ordered to be printed in the RECORD, as follows:

NEW LIFE FOR OLD BUILDINGS—CONFRONTING ENVIRONMENTAL AND ECONOMIC ISSUES TO INDUSTRIAL REUSE

(By Charles Bartsch, Jocelyn Seitzman, Carol Andress, and Deborah Cooney)

Shuttered industrial complexes with contaminated buildings and soils sit idle in communities across the United States. While they pose a special problem in the "rustbelt" states of the Northeast and Midwest, they are truly a national concern. In an August investigative report, the Detroit News termed this situation "our legacy of decades of heavy industry." Today, millions of acres of contaminated industrial land defy renewal, the Chicago area's Southtown Economist wrote in June, "because of the myriad problems that stand in the way of rescuing them."

These sites include the closed steel mills of western Pennsylvania and Chicago's southeast side, textile mills from New England to North Carolina, mining centers throughout the West, and machine shops, mental-plating factories, and chemical plants in cities such as Toledo, Ohio, South Bend, Indiana, and Baton Rouge, Louisiana. Changes in technology and world markets have rendered these once thriving producers of goods and jobs obsolete.

Few needs are more pressing than that of restoring these buildings and sites to useful life. Their continued deterioration will only worsen the environmental problems already created and weaken the economic base of their host communities. These properties have the potential to house emerging technologies and manufacturing processes once rehabilitated. Their adaptation to new uses could restore not only the buildings and their environment but also the jobs and vitality of the communities surrounding them.

The reuse potential of outmoded industrial complexes, however, involves much more than new windows and ceilings. In addition to the exceedingly complex technical, physical, and economic challenges of retrofitting older buildings to house new operations are serious pollution problems. Refineries, processing plants, and other heavy industrial functions—especially those that began earlier in the century—were not gentle to the environment. As a result, attempts to reuse industrial sites must confront a host of issues that new construction often can avoid. Investment capital, which is in short supply for reuse and renovation projects in general, has nearly dried up for sites with even a hint of contamination. The savings and loan crisis has dampened real estate activity overall; in this climate few lenders are willing to take on a project in which the value of their collateral may be lost to cleanup liabilities.

Large metropolitan areas have considerable difficulty grappling with these problems; small cities often fare much worse, having no resources available to deal with them. Industrial towns such as those in Pennsylvania's Monongahela Valley and Michigan's Downriver area grew up around one factory complex and have few businesses independent of it. Small towns have lost large parts of their tax bases after plant shutdowns, making cleanup and reuse virtually impossible without outside help.

Yet in spite of these difficulties, few jurisdictions have a choice; the benefits of returning these structures and properties to productive use outweigh the option of inactivity. Federal and state agencies, development organizations, and private interests are confronting the obstacles, however daunting. Public and private entities have mapped out several strategies to encourage reuse of old sites and structures. Some recognize the economic advantage of historic preservation and have restored their communities' industrial identity as small-scale production centers, seaports, or mill villages. Buildings with particularly striking architecture or historic connections become desirable properties. Developers are converting factory complexes to housing, shops, museums, and festival markets in communities from San Francisco to Boston.

While many of these conversions are appropriate and desirable, factory sites and structures are often only suited for industrial uses. A new generation of industrial systems, processes, and technologies can be accommodated in older facilities. State agencies and private developers are using old mills, laboratories, and arms manufacturing plants for new, cleaner industrial operations.

The Northeast-Midwest Institute has completed a major study, one of the first ever to analyze both the environmental and economic challenges to industrial reuse. This paper summarizes that report, New Life for Old Buildings, which examines: environmental factors, the legal framework for liability, and the impact on project finance in the economic development process; the process for identifying and treating contamination, and state efforts to clarify uncertainties; public-sector financial incentives to spark reuse through federal programs and prospective state initiatives; more than a dozen detailed case studies of industrial site cleanup and restoration; and initial thoughts on a national reuse strategy.

FACTORS THAT INHIBIT REUSE

Despite the many benefits, several factors that inhibit reuse of old industrial sites have

become more evident in the past five years. The legacy of serious contamination at many sites and stringent environmental laws present great impediments to quick resolution. In fact, potential environmental liability is a major obstacle to the acquisition of industrial property or the merger of manufacturing industries. The decline of federal support for local projects also blunts reuse efforts.

Cost of Environmental Cleanup

Processing plants, steel mills, and other industrial facilities, as well as service-oriented enterprises such as auto repair shops and dry cleaners, pollute the land, water, and air—and have for decades. The new elements are public awareness and knowledge of the health and environmental risks and a recognition that pollutants must be cleaned. The Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA, or Superfund), enacted in 1980, holds present owners responsible for the costs of cleanup even if they did not cause the contamination. Because of these liabilities, prospective purchasers usually require that the property be cleaned before they buy or lease it. Unfortunately, cleanup is rarely easy or cheap; the contamination in fact triggers a host of technical and legal tangles.

Cleanup adds to the cost of a redevelopment project, often significantly. Valuable sites and structures where the expected financial returns exceed the redevelopment costs, including cleanup, will attract the needed resources. Economically marginal facilities, on the other hand, will lie dormant without some additional incentive or assistance. Depending on the extent and type of contamination, cleanup costs can reach into tens of thousands, sometimes millions of dollars. Cleanup also takes time, extending project completion time by months or even years. For developers, any delay is costly; they are dealing with sunk costs that eat into the profitability of a project. According to a 1990 Wall Street Journal article, contamination is "killing some deals outright, sharply raising the price tags of others and causing still others to crash later on." The mere suspicion of contamination has increased lending costs. More time and staff work is required to put financial packages together, and prospective borrowers must pay for environmental assessments and more detailed appraisals. The extra steps affect many small firms' ability to secure financing.

Uncertain Liabilities

Although CERCLA broadly defines who is potentially liable, uncertainty still clouds many individual projects and deters reuse. The prospect of liability keeps companies and private developers from being able to borrow enough to clean up properties and modernize buildings. Local governments, public-private development organizations, and nonprofit groups taking title to property through forfeiture, condemnation, or donation increasingly are concerned about the possible repercussions of their real estate acquisitions.

At the center of the issue is the extent to which lenders, as potential owners or operators of a facility, are liable for the cleanup costs should they assume title through foreclosure. Recognizing the unique role of lenders and investors, Congress in 1986 included in Superfund a specific exemption for persons who do not participate in management but who hold an ownership claim on a facility to protect their investment (as loan collateral, for example) as part of conventional underwriting practices. This is known as the "secured creditor exception" or SCE, which covers lenders having only limited involvement in managing or operating a property, either as creditors or as owners following foreclosure. Several court cases have attempted to clarify what constitutes "ownership" and "participation in management." These cases included Bergsoe Metal Corp. v. East Asiatic Co., Ltd., which pegged SCE eligibility to what the financial sponsor actually did in managing the project, not simply what rights or unexercised authority it had to influence the operation. While lenders could be liable if they were involved in management beyond the financial dealings of a facility, judicial decisions until 1990 generally supported the promise of Bergsoe.

However, the most controversial case, U.S. v. Fleet Factors Corporation, raised new uncertainties about when lenders cross the threshold of "ownership" into "participation in management." The court ruled that a secured creditor could be liable under CERCLA if its involvement with a facility's management is "sufficiently broad to support the inference that it could affect hazardous waste disposal decisions if it so chose." The judge also stated that "it is not necessary for the secured creditor to actually involve itself in the day-to-day operations of the facility in order to be liable." Lenders have taken issue with the fact that, despite CERCLA's explicit exclusion for lenders who hold a security interest in property, the ruling implies that lenders serve as owners of property because of the nature of their financial relationship with their borrowers. This decision appears to broaden the range of those liable and means that they can be held responsible for cleanup efforts. It has made most lenders reluctant to become involved in any properties involving or suspected to contain hazardous substances—in practice, nearly every old industrial facility. Clearly, this reluctance will affect reuse efforts drastically.

Concerns about the impact of lender liabilities on real estate transactions and loans to small businesses have prompted several proposals in the 102nd Congress to broaden the CERCLA exemptions for lenders. According to testimony in support of these bills fear of liability is affecting both loans for purchase of potentially polluted property and investment in businesses that may occupy the site in the future. At best, many borrowers are facing greatly increased loan-transaction fees and other costs as the lending community grapples with the provisions of CERCLA. At worst, companies are having their financing cut off altogether.

However, some experts have testified that making the lender liable in some instances serves a valuable role in ensuring that contamination is identified and cleaned and that borrowers stay clean. Fears of lenders notwithstanding, several public and private environmental interests maintain that existing CERCLA provisions are appropriate and meet their mission without deterring investment or forcing other negative economic consequences. The lender's stick is quick and direct—if the property is not cleaned no money is loaned.

A decade of experience with CERCLA has shown that the environmental probes that lenders now perform routinely have helped reverse long-standing abuses at thousands of older industrial and commercial sites. An exemption that is too broad may encourage indiscriminate lending practices on contaminated sites and discourage private-sector cleanups. Clarification of liabilities, rather than exemption, may be sufficient to clam lenders fears. To that end EPA on June 5, 1991, issued a proposed rule in response to the Fleet Factors ruling to clarify issues of liability for financial institutions and individuals holding security interests in properties. The proposal specifies a range of activities, including foreclosure, that lenders can undertake to protect their collateral without triggering CERCLA liability provisions. It remains to be seen whether the new rule sufficiently balances lenders' and environmentalists' concerns or whether legislation is still needed.

Uncertain Process

Public officials trying to encourage site reuse and attract private developers and investors express confusion about the process for identifying and cleaning up contamination. Some of this fear stems from lack of understanding of environmental laws and procedures which often intimidates developers and economic development officials. In fact, the process becomes more perplexing and more complex legally every year as environmental laws are amended, regulations are modified, and courts reinterpret their applications. As one economic development official noted most projects formerly did not involve lawyers until settlement; now the lawyer is often the first person on site.

Developers, economic development officials and lenders also nervous about the lack of guidance on how to protect themselves from liabilities. Prospective owners may protect themselves under the "innocent landowner defense" added to CERCLA in 1986 by conducting "all appropriate inquiry" prior to acquiring the property. Not surprisingly, environmental assessments are a booming business; the Bureau of National Affairs estimates that owners and prospective owners could spend more than $400 million by the year 2000 to evaluate environmentally risky properties. In spite of this level of activity, such assessments are neither universal in scope nor consistently performed. No national guidelines exist, and neither EPA nor the courts (through case law) have defined how much inquiry is enough and what level is appropriate. Instead EPA has stated it will decide what is appropriate on a case-by-case basis. The lack of clarity on the need for an environmental assessment or what it must include means the scope of inquiry at different sites may vary widely.

This imprecise language and lack of interpretation leaves lenders and purchasers to determine appropriate inquiry. Prospective landowners, particularly those with limited resources, cannot be certain of the steps needed to ensure compliance with the law and prevent possible liability. Without guidance, inadequate environmental investigations—sometimes based on limited or incorrect understanding of the requirements—may complicate property transfers and impede public and private efforts to identify and clean up contamination. In fact, faulty assessments will allow contamination to remain untended and possibly spread.

Moreover, some experts believe that the fluidity of the process leads to minimal efforts at compliance. Even worse, some site owners may conclude that no way exists to avoid liabilities and, therefore, no benefit is gained in spending money on thorough site assessments. In some cases, purchasers committed to buying the property may not investigate the full extent of any problems at the site, usually because state regulatory involvement is such a burden. Some adopt what one expert called the "what they don't know won't hurt them" posture. In other situations, prospective owners will be deterred

from purchasing the property if they must spend more money to find out if there is any contamination. Developers also are concerned that even when they clean a property to today's standards, it may not be enough; what is considered clean today may not be tomorrow.

Such uncertainties affect their cost projections for a site. Several developers have stated that they would consider virtually any site for a project if a cleanup timetable and costs can be defined. They avoid those likely to become floating cleanup targets. Many fear that changes in environmental standards and improvements in technologies may force them to revise their cleanup plans when a project is underway, adding more costs and delays. More sophisticated devices may discover previously undetected contamination that they, as current owners, would be required to clean up. Unfortunately, environmental laws, like tax laws, probably will continue to change.

The process of identifying hazards is further clouded by the lack of standard accreditation for site assessors. Even with guidance on all appropriate inquiry, much depends on the judgment of the individual doing the assessment, especially when less visible subsurface contamination is involved. The assessor's qualifications, therefore, can have a great impact on the quality of their review. Unfortunately, assessors do not need a license to practice, nor do they bear any responsibility or liability for an inaccurate assessment. A poor evaluation can lead to unnecessary expenses up front, or result in costly surprises later on.

In response to these concerns, several states are trying to standardize elements of the environmental review process by enacting "buyer protection programs" for potential purchasers of industrial properties. They are commonly known as property-transfer laws. One of the most aggressive laws is New Jersey's Environmental Cleanup Responsibility Act (ECRA), passed in 1983. ECRA imposes preconditions on the sale, transfer, or closure of industrial facilities containing hazardous substances. Sellers subject to ECRA must conduct an environmental assessment to determine the presence and extent of contamination. Ultimately, the seller must prepare a cleanup plan which, after state approval, must be implemented. Once the site has been cleaned and the state certifies compliance, the transaction may proceed.

At first this program was criticized as too intrusive and deleterious to real estate transactions in the state. However, most fears of its effect appear to be unfounded. Lenders view the law favorably because the process is well defined and the state certifies cleanliness. Thousands of properties have been sold since 1983. More importantly, site cleanup has boomed; nearly 300 privately funded cleanups have been completed to date (compared to about 60 cleanups during 11 years of federal Superfund program activity) and another 373 are under way. ECRA ensures that when a property is ultimately sold, it is clean. At the end of the process, sellers receive a letter from the state certifying that fact. ECRA does not relieve owners of liability for contamination that occurs after the transaction, but it does reduce the change of contamination going undetected and being passed on to the prospective buyers.

Connecticut's Transfer Act imposes notification requirements for the sale of property where hazardous material was generated or handled. California requires notification to buyers of hazardous substance releases before sale of the property; so far it is the only state to adopt a mechanism to register environmental assessors. The Illinois Responsible Property Transfer Act (IRPTA) was designed to increase buyer, seller, and lender awareness of environmental liability involved in property transfers and stimulate private investigations and cleanups. Recent changes to Michigan's Environmental Response Act will implement extensive state control over hazardous waste sites and impose strict liabilities on responsible parties. One key incentive is a "covenant not to sue" for qualifying "innocent landowners" proposing to redevelop or reuse a contaminated facility.

Decline in Federal Financial Support

Federal economic development programs and tax incentives provide the financial foundation for numerous site reuse and structural renovation projects. Yet federal funding for economic development programs has fallen dramatically in the last ten years; it is not likely to be restored, given the current budget climate. Moreover, loss of direct federal funding was exacerbated by changes in two important tax code provisions: industrial development incentives and rehabilitation tax credits. Tax-exempt small-issue industrial development bonds (IDBs) have in the past provided flexible and affordable financing for a variety of privately undertaken projects. Many IDBs were earmarked for site-reuse activities. However, the Tax Reform Act of 1986 capped the level of IDB activity in each state and forbade their use for manufacturing projects after 1989. Later this authority was extended until the end of 1991, when it will expire unless Congress decides to extend it.

Rehabilitation tax credits have more direct influence on reusing old industrial sites. Congress devised these tax credits to discourage unnecessary demolition of sound older and historic buildings and to slow the loss of businesses from old inner-city industrial sites and downtown commercial areas. The 1986 tax law, however, made these credits more difficult to use by applying new limits on passive losses and passive credits that generally result from real estate activity. This change restricted the benefits of investment by prohibited tax credits a passive-income activity—to offset taxes owned on salaries, dividends, and other active income. The act also reduced the pool of high-income investors able to take advantage of the benefits by capping the credit at $7,000 for any individual and eliminating it for persons with more than $250,000 in income. This cap has halted many high-priced industrial-reuse efforts, especially for historic buildings.

The fading of these incentives has hurt site and facility reuse. The situation is especially severe for small and start-up businesses. The public sector has a role in helping to finance and advance reuse projects. Moreover, these efforts do not have to be "giveaways." The notion of the entrepreneurial city or state, increasingly prevalent in many types of development programs, can be extended to initiatives targeted to site cleanup and reuse; public agencies and organizations that share in project risks can also share in its rewards.

States have assumed greater responsibilities for site reuse because the federal government has reduced its participation so drastically. They have set up finance programs to ease the cost or terms that borrowers face, augmented private funds, and filled funding gaps that the private sector will not bridge. States offer numerous financing options to solve a variety of economic development problems: grants, individual loans and revolving loan funds, loan guarantees, interest subsidies, chartering or capitalizing business development corporations, tax increment financing, and tax abatements. States formulating a reuse strategy could adopt these tools separately or in combination. Moreover, public-sector financial support does not have to help specific companies; states and localities could assume some of the responsibilities for testing, site preparation, and cleanup, recovering some of their costs during subsequent site sale or development. Minneapolis has such a program in place now.

Several States are considering new types of financial-assistance programs targeted directly to the needs of projects that face environmental difficulties. Michigan's new Site Reclamation Grant and Loan Program provides funding for site remediation based on environmental factors as well as economic development potential. One program official called it "a cleanup program with a twist." Pennsylvania has adopted an Industrial Communities Action Program (ICAP) that offers grants to bring blighted industrial sites into productive use. ICAP is geared to projects that encourage local commitment and participation to bring dormant facilities back into productive use.

EFFECTS OF CONTAMINATION AND LIABILITY ON ECONOMIC DEVELOPMENT

Lender liability is not the only issue involved in the complex relationship between environmental concerns and the economic development process, but it is a key one. According to a Minnesota industrial development expert interviewed in the Dayton Daily News, "If developers are scared of contaminated properties, banks are downright terrified." Lenders see themselves targeted as "deep pockets" to be tapped for cleanup costs, which may exceed the total value of the property. While prudent lending practice may dictate that a lender foreclose on property in default, the threat of CERCLA liability in some cases requires the lender to abandon the property, even in cases where an attempt to clean and reuse it might prove worthwhile.

Little statistical evidence exists to support lenders' contention that a serious liability problem exists. Bankers, nevertheless, are changing the way they deal with projects that even remotely involve contamination in response to these risks—real or perceived. More and more, lenders are simply avoiding doing business with them altogether. In a recent American Bankers Association poll of smaller financial institutions, 43 percent of the responding lenders indicated that they have already stopped making loans to companies associated with environmental concerns, and another 11 percent plan to curtail such lending. Many bankers have cut off financing altogether for certain categories of undesirable borrowers such as high-technology metal fabricators, semiconductor facilities, and bottling and canning plants—ironically, many of the same industries targeted by government agencies and economic development organizations for special attention as part of community growth and diversification strategies.

Environmental concerns have driven transaction costs higher because lenders now require a thorough environmental assessment and necessary cleanup as a condition of loan approval. These steps can be worthwhile, but they are time-consuming and expensive; satisfactory assessments of long-time industrial sites can cost $50,000 or more. In many cases, the time and cost of processing a loan pack-

age has increased threefold. Small businesses with few assets and little equity are hard hit by the amount of these up-front investigative fees, which make loans prohibitively expensive to obtain.

In other cases, bank officials are limiting their interaction with the borrower to reduce their exposure to liability. This restraint comes at the expense of the business borrower, who could benefit from information and technical support that lenders customarily offer their borrowers. Varying judicial rulings have left lenders uncertain about how to manage their loans and advise their customers.

Coping With Contamination: Selected Redevelopment Projects

In researching New Life for Old Buildings, Institute staff identified several industrial reuse projects. Some have succumbed to the problems of contamination, but others have been successful despite all odds. Innovative public-private partnerships, cooperative efforts of local and state agencies, and marketing ingenuity have played an important role in the projects profiled.

The Upper Illinois Valley Association (now the Canal Corridor Association) organized a drive to revitalize a 170-acre, nearly abandoned former U.S. Steel site in Joliet as part of a larger, multi-jurisdictional reuse effort centered on the Illinois and Michigan Canal National Heritage Corridor. A division of USX corporation, which owns most of the site, is preparing it for reuse.

Minneapolis buys contaminated properties and arranges for their cleanup and redevelopment for industrial purposes. Recent purchases include a tank farm and railyard.

Rejuvenate Davenport in Iowa successfully arranged for the reclamation and reuse of an abandoned manufacturing plant despite a bout with unexpected contamination. The willingness of city officials to help finance the project and their cooperation with future owners is a model of broad-based community involvement in reuse projects.

Cooperation between the city of Wyandotte, Michigan, and BASF Corporation, a key employer, made a long-time industrial site available for reuse after a major cleanup effort paid for by the company.

In Wichita, Kansas, city officials and community leaders have grappled with groundwater contamination under a large section of downtown. Recently the city accepted liability for the contamination to allow business lending to go forward in that area.

The Santa Fe railroad and a development group cleaned a contaminated railyard near Chicago's Chinatown district for offices, retail and residential use, and a trade center.

In spite of heavy contamination of sections of the property, the Meadville, Pennsylvania, Redevelopment Authority converted a former synthetic fiber-making plant into an industrial park. Cleanup continues in stages, but the park operates safely as it proceeds.

The Southern Vermont Development Council (SVDC) in Bennington is struggling to retain tenants of a redeveloped textile mill after an EPA inquiry unexpectedly found contamination. SVDC crafted a legal arrangement to limit its liability and protect future tenants.

Officials at the Waterloo Museum and Recreation Center in Waterloo, Iowa, worked closely with the state environmental regulatory agency and a responsible party to remove and underground storage tank threatening an addition to the museum.

City officials in Fond du Lac, Wisconsin, are working closely with state regulators to develop a flexible reuse plan for an abandoned tannery in downtown.

City officials in Eau Claire, Wisconsin, worked out an agreement between the city, a responsible party, and the future owners of a manufacturing plant that shifted the burden of liability for contamination among the parties and allowed the project to proceed.

The New York legislature in 1991 authorized the Horizons Waterfront Commission to establish in the western part of the state "a waterfront which . . . reaches its fullest economic potential, and which is environmentally sound." The commission has adopted a long-term plan to guide the revitalization and reuse of the Erie County waterfront, which held numerous heavy industrial operations.

THE CHALLENGE: CONFRONTING ENVIRONMENTAL AND ECONOMIC ISSUES TO REUSE

Underused or abandoned industrial facilities are a national concern. Confronting the environmental and economic issues affecting industrial site reuse requires a deliberate, multi-dimensional approach. A consistent thread through successful projects is that parties often in conflict—the environmental and economic development professionals, private developers, lenders, and preservationists—must work cooperatively. A significant obstacle to reuse, in fact, is that these different interests have focused only on their part of the problem, ignoring other important aspects.

The combined efforts of the public and private sectors will be needed to bring prosperity back to these sites. Reuse can be economically worthwhile. If industrial site reuse is to succeed in achieving its full potential for economic recovery and growth, however, a national strategy for reuse must be framed that addresses investor and developer concerns in a way that is environmentally responsible. The problems associated with old buildings and contaminated land are complex and diverse; a viable strategy will have to tackle the thorny issues raised by the Institute's research.

No community benefits when entangled liabilities for a site actually allow contamination to worsen by preventing cleanup and reuse. No business or worker benefits when lender fears thwart investment in facility modernization or clean up. No local, state, or regional economy gains when sites remain dormant, existing infrastructure goes unused, and adjoining neighborhoods suffer from ongoing distress.

The increasing interplay between the economic and environmental arenas is emerging as one of the most prominent development issues of the 1990s. The obstacles to revitalizing and reusing old industrial properties are formidable, but not insurmountable. The benefit can be considerable.

By Mr. MACK:

S. 300. A bill to provide for the utilization of the latest available census data in certain laws related to airport improvements; to the Committee on Commerce, Science, and Transportation.

S. 302. A bill to provide for the utilization of the latest available census data in certain laws related to Energy and Natural Resources; to the Committee on Energy and Natural Resources.

S. 303. A bill to provide for the utilization of the most current census data in certain laws related to the environment and public works; to the Committee on Environment and Public Works.

S. 304. A bill to provide for the utilization of the latest available census data in certain laws related to urban mass transportation; to the Committee on Banking, Housing, and Urban Affairs.

S. 305. A bill to utilize the most current Federal census data in the distribution of Federal funds for agriculture, nutrition, and forestry; to the Committee on Agriculture, Nutrition, and Forestry.

S. 306. A bill to provide interim current census data on below poverty urban, rural, and farm populations; to the Committee on Governmental Affairs.

S. 307. A bill to require that, in the administration of any benefits program established by or under Federal law which requires the use of data obtained in the most recent decennial census, the 1990 adjusted census data be considered the official data for such census; to the Committee on Governmental Affairs.

S. 308. A bill to require the use, in Federal formula grant programs, of adjusted census data, and for other purposes; to the Committee on Governmental Affairs.

THE FAIR SHARE ACTS OF 1993

• Mr. MACK. Mr. President, today I am introducing legislation to ensure that Federal funds are distributed to States fairly and reflect a State's current needs. The Fair Share Acts of 1993 would require that Federal funds to States are allocated fairly, based on the most recent population data available.

A total of 100 Federal programs, providing around $116 billion in grants at the State and local levels, use population count or characteristic data—such as age or income—in the formulas that allocate all or a portion of program grant money. Some of these programs are still required by law to use decennial census data when more recent estimates are available. The result is that the years go by between decennial censuses, high growth States, such as Florida, are increasingly shortchanged by using these outdated populated figures.

Consider fiscal year 1989 as an example, when some of the Federal formula grant programs used Census Bureau population data that was almost 10 years old. The result: in Florida alone, over 3,190,000 people were ignored. Clearly these funds are needed immediately as the population expands and the State and local infrastructure incurs stress, not 8 or 9 years later.

During the time between the 1980 and 1990 decennial census, Florida's population increased by nearly 900 people every day. That is the equivalent of every person currently living in the States of Wyoming, South Dakota, Montana, and Maine packing up all their belongings and moving to the State of Florida, all in the span of 10 years.

Some may argue that since Federal formula grant programs are now using

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the most recent decennial census data, any harm done to Florida during the 1980's will now be undone, especially since Florida is now the fourth largest State. This is simply not true and is downright misleading. Instead of benefiting and making up for previous losses, Florida and other fast growing States will be using all of these additional funds distributed by the new decennial census figures just to catch up.

I am deeply concerned that this violates the intent of Congress in creating these programs. Congress mandates that population should be used in distributing Federal funds for the purpose of dividing those funds among States fairly, that is in proportion to the relative number of people living in those States. Using old population data subverts congressional intent.

This is where my proposed legislation comes in. In order to correct this obvious violation of the principle of fairness, I have introduced eight separate bills. First, there are 10 programs that require the authorizing legislation to be amended to delete all references to the decennial census data. The first five bills divide these programs up among their respective committees of jurisdiction, amends them to delete references to the decennial census, and requires them to use the latest census estimates prepared by the Department of Commerce.

Second, there are 26 programs that use data that is only calculated once every 10 years. These programs use data concerning urban, rural, farm, and below poverty populations. One bill requires the Department of Commerce to publish annual data for each State, urban area, and rural area, on below poverty, urban, rural, and farm populations.

Another bill requires programs to use the most current data available. This bill will ensure that all programs that use population data will use the most current data available and will not change back to decennial census data for political or other reasons.

The final bill requires the Census Bureau to use the postenumeration survey data for calculation of the future estimates. This data is more accurate than the initial survey, and will prevent States that had high undercounts in the census from being cheated out of funds. The bottom line is this: The adjusted data is accurate, the original census figures are not.

This legislation will eliminate the spikes in funding that occur every 10 years and provide funds to areas intended by formulas based on population as the population increases. It's an outrage that Florida and other fast-growth States are being short-changed by a Federal Government that refuses to allow funding to follow population growth. It is high time that these inequalities be eliminated. These funds must be fairly distributed for the benefit of the people they are intended to help. It is my intent as a new member of the Senate Appropriations Committee to scrutinize all formula grant programs to ensure that the money does indeed follow the people.•

By Mr. D'AMATO (for himself and Mr. LIEBERMAN):

S.J. Res. 39. A joint resolution designating the weeks beginning May 23, 1993, and May 15, 1994, as Emergency Medical Services Week; to the Committee on the Judiciary.

EMERGENCY MEDICAL SERVICES WEEK

• Mr. D'AMATO. Mr. President, I rise today to introduce a joint resolution designating the weeks beginning May 23, 1993, and May 15, 1994, as "Emergency Medical Services Week," and I ask unanimous consent that the full text of the resolution be printed in the RECORD at the conclusion of my remarks.

This legislation recognizes the dedication of the approximately 750,000 men and women who give their time and talents to provide emergency medical services [EMS], including 25,000 emergency physicians, 70,000 emergency nurses, and 500,000 emergency medical technicians. There are also paramedics, educators, administrators, and lay people who have learned CPR and other first aid procedures to help care for those in need of emergency medical attention. Eighty percent of emergency medical service providers are volunteers. These men and women deserve our recognition for their efforts and our support for the events of Emergency Medical Services Week.

During the designated weeks, the American College of Emergency Physicians will sponsor events across the country to remind the public about the vital role that the EMS plays in the community and at the same time to educate them about safety practices and how to access emergency services. Last year, EMS units across the country held first aid demonstrations, distributed public safety tips, provided health screenings, and sponsored other activities to enhance the lives of those in their communities. Let's help them continue to make EMS Week a time of recognition and education.

Emergency medical services are vital to the health of the American public. Approximately 1.5 million heart attacks occur per year. For persons age 1–37, the No. 1 cause of death is unintentional injury. In 1991 there occurred 88,000 deaths due to unintentional injury, an average of 7,330 per month. In that same year, there were 43,500 deaths due to motor vehicle accidents. EMS units respond in all of these situations and often make the difference in surviving one of these occurrences. In 1991 there were 93,469,930 emergency department visits, 16 percent arriving by ambulance.

The dedication of the weeks of May 23, 1993, and May 15, 1994, as Emergency Medical Services Week will highlight the vital role that EMS units play in the community and will create an important opportunity for greater public education about accident prevention and medical emergency management.

I thank Senator LIEBERMAN for joining me as an original cosponsor of this vital measure. I urge my colleagues to consider the importance of this resolution to the health and well-being of all Americans, and to join us in supporting its prompt passage.

There being no objection, the joint resolution was ordered to be printed in the RECORD, as follows:

S.J. RES. 39

Whereas emergency medical services is a vital public service;

Whereas access to quality emergency care dramatically improves the survival and recovery rate of those who experience sudden illness or injury;

Whereas efforts to establish emergency medicine as a medical specialty began 25 years ago with the founding of the American College of Emergency Physicians in 1968;

Whereas the members of emergency medical services teams are ready to provide lifesaving care to those in need 24 hours a day, 7 days a week;

Whereas emergency medical services teams consist of emergency physicians, emergency nurses, emergency medical technicians, paramedics, firefighters, educators, administrators, and others;

Whereas approximately two-thirds of all emergency medical services providers are volunteers;

Whereas the members of emergency medical services teams, whether career or volunteer, engage in thousands of hours of specialized training and continuing education to enhance their lifesaving skills;

Whereas Americans benefit daily from the knowledge and skills of these highly trained individuals;

Whereas it is appropriate to recognize the value and the accomplishments of emergency medical services providers by designating Emergency Medical Service Week; and

Whereas the designation of Emergency Medical Services Week will serve to educate all Americans about injury prevention and how to respond to a medical emergency: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the weeks beginning May 23, 1993, and May 15, 1994, are designated as "Emergency Medical Services Week" and the President is authorized and requested to issue a proclamation calling upon the people of the United States to observe such weeks with appropriate ceremonies and activities.•

By Mr. KENNEDY (for himself, Mr. AKAKA, Mr. BAUCUS, Mr. BIDEN, Mr. BINGAMAN, Mrs. BOXER, Mr. BRADLEY, Mr. CHAFEE, Mr. COHEN, Mr. CONRAD, Mr. DASCHLE, Mr. DECONCINI, Mr. DODD, Mr. DORGAN, Mr. DURENBERGER, Mr. FEINGOLD, Mrs. FEINSTEIN, Mr. GLENN, Mr. GRAHAM, Mr. HARKIN, Mr. HATFIELD, Mr. HOLLINGS, Mr. JEFFORDS, Mr. JOHNSTON, Mrs. KASSEBAUM, Mr.

KERRY, Mr. LAUTENBERG, Mr. LEAHY, Mr. LIEBERMAN, Mr. LEVIN, Mr. METZENBAUM, Ms. MIKULSKI, Mr. MITCHELL, Ms. MOSELEY-BRAUN, Mr. MOYNIHAN, Mrs. MURRAY, Mr. PACKWOOD, Mr. PELL, Mr. RIEGLE, Mr. ROBB, Mr. ROCKEFELLER, Mr. SARBANES, Mr. SIMON, Mr. SPECTER, and Mr. WELLSTONE):

S.J. Res. 40. A joint resolution proposing an amendment to the Constitution of the United States relative to equal rights for women and men; to the Committee on the Judiciary.

EQUAL RIGHTS AMENDMENT

Mr. KENNEDY. Mr. President, I am pleased to reintroduce today the equal rights amendment, on behalf of myself and 43 other Senators, and to reaffirm our strong commitment to making the ERA part of the Constitution of the United States.

Enactment and ratification of the ERA is essential to ensure equality for women in both the law and the life of this land. Existing statutory prohibitions against sex discrimination have failed to give women basic educational and employment opportunities equal to those available to men in our society. The need for a constitutional guarantee of equal rights for all citizens remains compelling.

In the absence of the ERA, depressingly little change has occurred on women's rights, especially in the area of economic opportunity. An unconscionable gap between the earnings of men and women persists in the work force; women continue to earn less than 75 cents for every dollar earned by men. While this wage gap has narrowed over the past 10 years, it remains unacceptable.

Sex discrimination continues to permeate many areas of the economy. Women with college degrees have made significant inroads in many professional and managerial occupations in recent years. But women are still clustered in a very narrow range of traditionally female, traditionally low-paying occupations, such as clerical jobs, waiting on tables, nursing, child care, and elementary school teaching.

Female-headed households continue to dominate the bottom rungs of the economic ladder. In 1991, an astounding 46 percent of all families headed by single mothers lived below the poverty line. Half of all families with children in poverty are headed by women. This dismal situation is getting worse instead of better.

Plainly, much remains to be done to secure equal opportunity for women. Enactment of the equal rights amendment alone cannot undo generations of economic injustice. But it will encourage all women in their efforts to win redress under the Nation's laws and in the courts.

We know from the ratification experience of the 1970's and early 1980's that the road to adoption of the ERA will not be easy. But the extraordinary importance of the effort gives us the strength to persevere. With hard work, we can act in this Congress to approve the ERA, and begin the ratification process anew, so that at long last the ERA will take its rightful place in America's founding document.

Mr. President, I ask unanimous consent that the text of the resolution may be printed in the RECORD.

There being no objection, the joint resolution was ordered to be printed in the RECORD, as follows:

S.J. RES. 40

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled (two-thirds of each House concurring therein), That the following article is proposed as an amendment to the Constitution of the United States, which shall be valid to all intents and purposes as part of the Constitution when ratified by the legislatures of three-fourths of the several States:

"ARTICLE —

"SECTION 1. Equality of rights under the law shall not be denied or abridged by the United States or by any State on account of sex.

"SECTION 2. The Congress shall have the power to enforce, by appropriate legislation, the provisions of this article.

"SECTION 3. This amendment shall take effect two years after the date of ratification.".

By Mr. D'AMATO:

S. Res. 60. A resolution supporting United States requests to reopen the December 20, 1991 draft final text in the Uruguay round to address areas of particular concern to United States manufacturers, environmental and consumer groups; to the Committee on Finance.

SUPPORT FOR THE REOPENING OF THE DRAFT FINAL ACT TEXT IN THE URUGUAY ROUND

• Mr. D'AMATO. Mr. President, on January 19 the GATT's Director-General Arthur Dunkel provided an assessment of the current status of the Uruguay round multilateral trade negotiations. The negotiations, which were started in September 1986, are now in their 7th year. Although a final package is possible, the roadblocks to a successful conclusion remain significant.

While there are issues in the round of great importance to every Member of Congress and our constituents, the position of our country has been that no deal is better than a bad deal. On that point I am particularly concerned and focused on assuring that the ongoing GATT negotiations strengthen and don't weaken U.S. fair trade laws.

As my senior colleague from New York, Senator MOYNIHAN, and I pointed out before, during, and after our October 5 filibuster last fall, a grave oversight had been made regarding the lack of enforcement of the current U.S. trade laws. The consequences were devastating to hundreds of Smith Corona workers who lost their jobs as a result of inaction by the administration and by Congress. The case of Smith Corona couldn't have made more clear how easy it is for foreign companies to evade our anticircumvention laws. These laws, which were put in place to guarantee American workers and American companies a level playing field here at home, have obviously not been effectively implemented and enforced.

Our GATT trade representatives recognize that what is in the December 20, 1992, draft final act text of the Uruguay round is totally useless, for United States companies would continue to face the all too common practice of circumvention of antidumping orders by our trading partners. Our negotiators stated in their paper that,

From the outset of the negotiation, the United States has made clear that the U.S. acceptance of a moderate package of reforms to methodology depends on the inclusion in the text of effective anticircumvention provisions.

Mr. President, in the last Congress, Senator MOYNIHAN and I pushed for adoption of legislation that would correct existing deficiencies in U.S. law. This is an issue on which I feel convinced that our negotiators have taken appropriate steps to safeguard the right of our country to make our trade laws effective. I urge the new administration to aggressively pursue this issue.

We must work for an agreement that will strengthen the ability of U.S. companies to compete in the international arena. In addition, our agriculture and manufacturing industries seek a package that maximizes trade liberalization in tariffs and nontariff barriers that are consistent with our needs to be considerate to particularly sensitive sectors, while our service industries require a substantial package of commitments to justify their continued open access to the world market.

When a proposed package that would address some of these concerns was announced by the GATT Director-General in December 1991, only one major participant—the European Community—was unable to work with the basic package as a basis for negotiating a final deal. Throughout 1992, our negotiators were involved with the European Community in an effort to deal with their broad based problems with the agricultural text. The round's success was essentially held hostage to the bilateral negotiations between the United States and the European Community on agriculture. With the conclusion of the Blair House agreement in late November 1992, the Community achieved a significant revision in the agriculture package to reduce the adverse impact on their farmers.

With an agricultural compromise achieved, there was hope that other countries would be forthcoming in making meaningful offers in goods, initial commitments in services and that other issues in the December 1991 text could be quickly resolved.

In that regard, the United States has identified a series of critical issues in the December 1991 text that were, with few exceptions, not negotiated but added by the GATT Secretariat as arbitrated solutions to outstanding issues. In December 1992, the United States proposed changes that would be needed in the draft text. These modifications from the United States were generally effective solutions to particularly egregious problems with the draft text.

These proposals by the United States were made in an effort to comply with the congressionally identified negotiating objective to "improve the provisions of the GATT and nontariff measure agreements in order to define, deter, discourage the persistent use of, and otherwise discipline unfair trade practices having adverse trade effects, including forms of subsidy and dumping and other practices not adequately coverd"—19 U.S.C. 2901(b)(8)(A). While U.S. industries, that have had to seek protection from unfair trade practices, identified literally dozens of problems with the draft final text, our representatives sought to reopen negotiations with regard to only three issues: First, guidelines for panel review; second, sunset; and third, anticircumvention.

The issues raised by the United States reflect our extensive experience with unfair trade practices by our trading partners and our justified concerns over the direction of dispute settlement in these specialized areas. For example, the U.S. proposed guidelines for panel reviews in antidumping. In the current GATT panel process, opposing parties have attempted to raise issues never raised during the administrative proceedings, and to introduce evidence that was not before the decision makers. Panelists have also chosen to select the judgment of panelists who may have no actual familiarity with administrative practice of trade laws over those of the Government even though the latter's interpretation of the Code provision may be reasonable.

Also, under current U.S. law, antidumping duties do not accrue to the benefit of the injured domestic industry, are limited to the amount of dumping that occurs in the future, and result from the refusal of foreign producers to price fairly as opposed to some static price comparison taken during the original investigation. Thus, U.S. law places the burden on companies who continue to dump to justify the termination of outstanding orders. The United States has requested a change to the draft final act to permit the United States to continue that practice.

The resolution being presented today is intended to encourage the new administration continue to pursue an early resolution of the Uruguay round negotiations that will be in America's best interest. The changes that our negotiators have presented to our trading partners in Geneva are all very important for a balanced package to be achieved. The United States must continue to insist on rebalancing the package so our industries are not seriously prejudiced. This resolution calls for the changes proposed by our negotiators to be adopted in the Uruguay round of talks, and for a package to be negotiated that will increase trade liberalization, while addressing the concerns of our most sensitive import sectors. It also calls for achieving maximum commitments that would benefit our service sector, as well as providing for a trading environment which would maintain a level playing field for American companies at home and abroad.•

By Mr. ROTH:

S. Res. 61. A resolution amending the Standing Rules of the Senate; to the Committee on Rules and Administration.

A RESOLUTION TO AMEND THE STANDING RULES OF THE SENATE

• Mr. ROTH. Mr. President, today I am reintroducing legislation I introduced in 1991 to strengthen the independence and credibility of the Select Committee on Ethics. I have long been concerned with the problems inherent in asking Senators to investigate the conduct of their own colleagues—a concern I first raised in 1977, when I offered similar legislation. The problems I saw then I still see today.

The Senate is bound by the Constitution to judge the propriety of its own Members' conduct. For any small, collegial organization, this is not an easy task, though it is one we are obligated to undertake. The much more difficult task, however, is conducting the actual investigation of, and recommending specific action on, the conduct of a Member. This is what the Select Committee on Ethics must do, yet it is the role in which Senators feel most uncomfortable.

Compounding this natural discomfort is the public's distrust of Congress' ability to act with objectivity and thoroughness in these matters. Committee members know that even where no misconduct is found, an exoneration can unfairly taint both the investigators and the investigated.

Clearly there is a need for both the perception and the reality of greater independence by the investigating body. We cannot avoid the constitutionally imposed specter of Senators judging Senators, once the recommendations of the investigators reach the Senate floor. But we can do something about the process that occurs before the matter reaches that point.

I am proposing that the membership of the Select Committee on Ethics be changed, so that no sitting Senator is a member of that body. Instead, two former Members of Congress would be named to the Committee, who in turn would choose a retired judge to serve as chairman.

This three-member select committee would be paid on a per diem basis, serve 4-year terms, and not be eligible for reappointment. They would be prohibited from engaging in any outside employment that is in conflict with their official duties.

This committee of non-Senators will have greater independence in conducting thorough investigations and making fair recommendations. Both the perception and the reality of this would be enhanced by having a former judge as the chairman. The two former Members of Congress will bring a familiarity with congressional institutions and practices, without the handicap of having to work closely with someone they are also investigating. There is a real problem when a Member of Congress has to investigate someone whose vote they are seeking at the same time.

The current system puts the members of the select committee in a very difficult position. Indeed, the Senate owes a real debt of gratitude to those who have been willing in the past to serve in that capacity. It is now time to relieve Senators of this most difficult task of investigating, and recommending action on, close colleagues. I believe my proposal would accomplish this in a way that strengthens both the independence and credibility of the Select Committee on Ethics.•

ADDITIONAL COSPONSORS

S. 2

At the request of Mr. FORD, the names of the Senator from Colorado [Mr. CAMPBELL], the Senator from Connecticut [Mr. DODD], and the Senator from Washington [Mrs. MURRAY] were added as cosponsors of S. 2, a bill to establish national voter registration procedures for Federal elections, and for other purposes.

S. 7

At the request of Mr. MCCONNELL, the name of the Senator from Delaware [Mr. ROTH] was added as a cosponsor of S. 7, a bill to amend the Federal Election Campaign Act of 1971 to reduce special interest influence on elections, to increase competition in politics, to reduce campaign costs, and for other purposes.

S. 11

At the request of Mr. DECONCINI, the names of the Senator from Utah [Mr. HATCH], the Senator from Georgia [Mr. COVERDELL], and the Senator from Kansas [Mrs. KASSEBAUM] were withdrawn as cosponsors of S. 11, a bill to combat violence and crimes against women on the streets and in homes.

S. 21

At the request of Mrs. FEINSTEIN, the names of the Senator from Illinois [Ms.

MOSELEY-BRAUN], the Senator from Texas [Mr. KRUEGER], the Senator from Florida [Mr. GRAHAM], and the Senator from Delaware [Mr. BIDEN] were added as cosponsors of S. 21, a bill to designate certain lands in the California Desert as wilderness to establish Death Valley, Joshua Tree, and Mojave National Parks, and for other purposes.

S. 27

At the request of Mr. SARBANES, the name of the Senator from Maine [Mr. MITCHELL] was added as a cosponsor of S. 27, a bill to authorize the Alpha Phi Alpha Fraternity to establish a memorial to Martin Luther King, Jr., in the District of Columbia.

S. 50

At the request of Mr. WARNER, the names of the Senator from Idaho [Mr. KEMPTHORNE], the Senator from Georgia [Mr. COVERDELL], the Senator from Alaska [Mr. STEVENS], the Senator from Kansas [Mr. DOLE], the Senator from Colorado [Mr. BROWN], the Senator from Arkansas [Mr. BUMPERS], the Senator from Florida [Mr. GRAHAM], and the Senator from Ohio [Mr. METZENBAUM] were added as cosponsors of S. 50, a bill to require the Secretary of the Treasury to mint coins in commemoration of the 250th anniversary of the birth of Thomas Jefferson.

S. 81

At the request of Mr. NICKLES, the name of the Senator from Mississippi [Mr. COCHRAN] was added as a cosponsor of S. 81, a bill to require analysis and estimates of the likely impact of Federal legislation and regulations upon the private sector and State and local governments, and for other purposes.

S. 98

At the request of Mr. BRADLEY, the names of the Senator from Maryland [Mr. SARBANES] and the Senator from Illinois [Mr. SIMON] were added as cosponsors of S. 98, a bill to establish a Link-up for Learning grant program to provide coordinated services to at-risk youth.

S. 138

At the request of Mr. INOUYE, the name of the Senator from Hawaii [Mr. AKAKA] was added as a cosponsor of S. 138, a bill to prohibit a suspension of the Act of March 3, 1931 (commonly known as the "Davis-Bacon Act") in the State of Hawaii.

S. 139

At the request of Mr. INOUYE, the name of the Senator from Hawaii [Mr. AKAKA] was added as a cosponsor of S. 139, a bill to amend the Internal Revenue Code of 1986 to extend the period for the rollover of gain from the sale of a principal residence to a principal residence located in a disaster area.

S. 142

At the request of Mr. INOUYE, the name of the Senator from Hawaii [Mr. AKAKA] was added as a cosponsor of S. 142, a bill to provide that the Secretary of Commerce shall not set minimum or maximum amounts on grants made for the purpose of providing financial assistance to States whose tourism promotion needs have increased due to Hurricane Andrew, Hurricane Iniki, or other disasters.

S. 144

At the request of Mr. INOUYE, the name of the Senator from Hawaii [Mr. AKAKA] was added as a cosponsor of S. 144, a bill to waive certain requirements under the Small Business Act for disaster relief assistance.

S. 177

At the request of Mr. DOLE, the names of the Senator from Iowa [Mr. GRASSLEY] and the Senator from South Carolina [Mr. THURMOND] were added as cosponsors of S. 177, a bill to ensure that agencies establish the appropriate procedures for assessing whether or not regulation may result in the taking of private property, so as to avoid such where possible.

S. 211

At the request of Mr. MCCAIN, the names of the Senator from Alaska [Mr. STEVENS], the Senator from Arizona [Mr. DECONCINI], and the Senator from Nevada [Mr. REID] were added as cosponsors of S. 211, a bill to amend the Internal Revenue Code of 1986 to provide tax credits for Indian investment and employment, and for other purposes.

S. 235

At the request of Mr. REID, the name of the Senator from Washington [Mr. GORTON] was added as a cosponsor of S. 235, a bill to limit State taxation of certain pension income, and for other purposes.

S. 236

At the request of Mr. MCCAIN, the name of the Senator from Utah [Mr. BENNETT] was added as a cosponsor of S. 236, a bill to increase Federal payments to units of general local government for entitlement lands, and for other purposes.

SENATE JOINT RESOLUTION 30

At the request of Mr. D'AMATO, the names of the Senator from New Jersey [Mr. BRADLEY], the Senator from Ohio [Mr. GLENN], the Senator from Ohio [Mr. METZENBAUM], the Senator from Missouri [Mr. DANFORTH], the Senator from Kansas [Mr. DOLE], the Senator from Delaware [Mr. ROTH], the Senator from Michigan [Mr. LEVIN], and the Senator from Alabama [Mr. HEFLIN] were added as cosponsors of Senate Joint Resolution 30, a joint resolution to designate the weeks of April 25 through May 2, 1993, and April 10 through 17, 1994, as "Jewish Heritage Week".

SENATE RESOLUTION 11

At the request of Mr. DECONCINI, the names of the Senator from Utah [Mr. HATCH], the Senator from Florida [Mr. GRAHAM], the Senator from Georgia [Mr. COVERDELL], and the Senator from Kansas [Mrs. KASSEBAUM] were added as cosponsors of Senate Resolution 11, a resolution relating to Bosnia Herzegovina's right to self-defense.

SENATE RESOLUTION 35

At the request of Mr. LAUTENBERG, the names of the Senator from Colorado [Mr. BROWN] and the Senator from Illinois [Ms. MOSELEY-BRAUN] were added as cosponsors of Senate Resolution 35, a resolution expressing the sense of the Senate concerning systematic rape in the conflict in the former Socialist Federal Republic of Yugoslavia.

SENATE RESOLUTION 62—AUTHORIZING REPRESENTATION BY THE SENATE LEGAL COUNSEL

Mr. MITCHELL (for himself and Mr. DOLE) submitted the following resolution; which was considered and agreed to:

S. RES. 62

Whereas, in the case of Turner Broadcasting System, Inc., et al. v. Federal Communications Commission, et al., No. 92-2247, and consolidated cases Nos. 92-2292, 92-2494, 92-2495, 92-2558, pending before a three-judge court of the United States District Court for the District of Columbia, the plaintiffs have challenged the constitutionality of sections 4 and 5 of the Cable Television Consumer Protection and Competition Act of 1992, Pub. L. No. 102-385, 106 Stat. 1460, 1471-81, which require cable operators to carry the signals of certain local commercial and noncommercial educational television stations;

Whereas, pursuant to section 703(c) 706(a), and 713(a) of the Ethics in Government Act of 1978, 2 U.S.C. 288b(c), 288e(a), and 2881(a) (1988), the Senate may direct its Counsel to appear as amicus curiae in the name of the Senate in any legal action in which the powers and responsibilities of Congress under the Constitution are placed in issue: Now, therefore, be it

Resolved, That the Senate Legal Counsel is directed to appear as amicus curiae on behalf of the Senate in Turner Broadcasting System, Inc., et al. v. Federal Communications Commission, et al., and consolidated cases in support of the constitutionality of sections 4 and 5 of the Cable Television Consumer Protection and Competition Act of 1992, Pub. L. No. 102-385, 105 Stat. 1460, 1471-81.

SENATE RESOLUTION 63—AUTHORIZING REPRESENTATION BY THE SENATE LEGAL COUNSEL

Mr. MITCHELL (for himself and Mr. DOLE) submitted the following resolution; which was considered and agreed to:

S. RES. 63

Whereas, in the case of Bobbie Hill v. Bill Clinton, et al., No 92-6171, pending in the Circuit Court of Pulaski County, Arkansas, the plaintiff has named, among others, Senator Dale Bumpers and Senator David Pryor as defendants;

Whereas, pursuant to sections 703(a) and 704(a)(1) of the Ethics in Government Act of 1978, 2 U.S.C. §§288b(a) and 288c(a)(1), the Senate may direct its counsel to defend Members of the Senate in civil actions relating to their official or representative capacity: Now, therefore, be it

Resolved, That the Senate Legal Counsel is directed to represent Senator Dale Bumpers and Senator David Pryor in the case of Bobbie Hill v. Bill Clinton, et al.

AMENDMENTS SUBMITTED

FAMILY AND MEDICAL LEAVE ACT OF 1993

GORTON AMENDMENT NO. 9

Mr. GORTON proposed an amendment to the bill (S. 5) to grant family and temporary medical leave under certain circumstances, as follows:

On page 19, lines 11 and 12, strike "HIGHLY COMPENSATED EMPLOYEES" and insert "KEY PERSONNEL".

On page 19, line 15, strike "described in paragraph (2)" and insert "who is designated under paragraph (2)(A), or, if no employee is so designated, who is deemed to be designated under paragraph (2)(B)".

On page 20, strike lines 1 through 6, and insert the following:

(2) AFFECTED EMPLOYEES.—

(A) DESIGNATED EMPLOYEES.—

(i) IN GENERAL.—The employee may designate as key personnel up to 10 percent of the eligible employees of the employer at a facility, or employed within 75 miles of the facility.

(ii) BASIS.—An employer shall not designate key personnel on the basis of age, race, color, sex, or national origin, or for the purpose of evading the requirements of this title. No employer may designate an eligible employee as a member of the key personnel of the employer after the employee gives notice of intent to take leave pursuant to section 102.

(iii) MANNER.—Designations of employees as key personnel shall be in writing and shall be displayed in a conspicuous place described in section 109(a).

(iv) EFFECTIVE DATE.—Any designation made under this subparagraph shall take effect 30 days after the designation is issued and may be changed not more than once in any 12-month period.

(B) EMPLOYEES DEEMED TO BE DESIGNATED.—Until an employer designates key personnel under subparagraph (A), an eligible employee who is among the highest paid 10 percent of the employees employed by the employer within 75 miles of the facility at which the employee is employed shall be deemed to be designated as a member of the key personnel of the employer.

GORTON AMENDMENT NO. 10

Mr. GORTON proposed an amendment to the bill (S. 5), supra, as follows:

On page 13, strike line 14 through 24 and insert the following:

(1) REQUIREMENT OF NOTICE.—

(A) IN GENERAL.—

(i) NOTICE.—In any case in which the necessity for leave under subparagraph (A) or (B) of subsection (a)(1) is foreseeable based on an expected birth or placement, the employee shall provide the employer with not less than 30 days' written notice, before the date the leave is to begin, of the employee's intention to take leave under such subparagraph.

(ii) DATES; SCHEDULE.—Such notice shall state the dates during which the employee intends to take leave or provide a schedule under which the employee intends to take intermittent or reduced leave.

(B) EXCEPTIONS.—The employee shall take the leave described in subparagraph (A)(i) in accordance with the dates or schedule stated in the notice unless—

(i) the birth is premature;

(ii) the employee must care for a son or daughter because the mother is so incapacitated due to the birth that the mother is unable to care for the son or daughter;

(iii) the employee takes physical custody of a child being placed for adoption at an unanticipated time and is unable to give notice 30 days in advance of such time; or

(iv) the employer and employee agree to alter the dates of leave, or the schedule of leave, stated in the notice.

(C) REVISED DATE OR SCHEDULE.—In a case referred to in subparagraph (B), the employee must give such notice of revised dates during which the employee intends to take the leave, or a revised schedule under which the employee intends to take the leave, as in practicable, but at least 1 workday of notice before the date the leave is to begin.

On page 14, line 13, insert "written" after "days'".

On page 14, line 18, after "practicable" insert the following: ", but at least 1 workday of notice before the date the leave is to begin".

KASSEBAUM (AND OTHERS) AMENDMENT NO. 11

Mrs. KASSEBAUM (for herself, Mr. NICKLES, and Mr. THURMOND) proposed an amendment to the bill (S. 5), supra, as follows:

In section 102 of the bill, add at the end the following:

(g) REQUIREMENTS CONSIDERED TO BE SATISFIED IF CAFETERIA PLAN PROVIDES FOR LEAVE.—

(1) IN GENERAL.—Notwithstanding any other provision of this Act, an employer shall be considered to have satisfied the requirements of this title with respect to any employee if—

(A) such employee is a participant in a cafeteria plan, as defined in section 125(d) of the Internal Revenue Code of 1986, that is maintained by the employer;

(B) section 125(a) of the Internal Revenue Code of 1986 applies to the benefits under such cafeteria plan; and

(C) a participating employee is eligible to choose, as a benefit under such plan, a family and medical leave benefit that provides family and medical leave rights identical to, or greater than, the rights provided under this title, including any right of the employee under—

(i) this section, or

(ii) section 104 (including the rights under such section to be restored to employment and receive continued coverage under a group health plan).

(2) REGULATIONS.—The Secretary of the Treasury shall issue regulations establishing methods for employers to value such a family and medical leave benefit under such a cafeteria plan.

(3) CONSTRUCTION.—Nothing in this subsection shall affect—

(A) the duties or liabilities of an employer under this title with respect to an employee; or

(B) the right of any person to enforce the requirements of this title against an employer with respect to an employee,

unless the employee elects not to receive such a benefit under such plan.

WALLOP (AND OTHERS) AMENDMENT NO. 12

Mr. WALLOP (for himself, Mr. DOLE, Mr. SIMPSON, and Mr. NICKLES) proposed an amendment to the bill S. 5, supra, as follows:

At the end of the bill add the following:

SECTION 1. PERMITTING COMPENSATORY TIME OFF.

Section 7(o) of the Fair Labor Standards Act of 1938 (29 U.S.C. 207(o)) is amended—

(1) by redesignating paragraph (6) as paragraph (7); and

(2) by inserting after paragraph (5), the following new paragraph:

"(6) With respect to employees not covered under paragraph (1), an employer may not be deemed to have violated subsection (a) by employing any employee for a workweek in excess of the maximum workweek applicable to such employee under subsection (a) if, pursuant to a contract made between the employer and the employee individually, or an agreement made as a result of collective bargaining by representatives of employees entered into prior to the performance of the work, the employer at a written request of the employee grants the employee compensatory time off with pay in a subsequent workweek in lieu of payment of the number of hours worked in such current workweek in excess of the maximum workweek applicable to such employee under subsection (a). For purposes of determining the maximum workweek applicable to such employee under subsection (a), and the rate of pay due to the employee, compensatory time used by the employee shall be considered hours actually worked during the subsequent workweek in which actually used.".

PRESSLER AMENDMENT NO. 13

Mr. PRESSLER proposed an amendment to the bill (S. 5), supra, as follows:

Section 102(c) of the bill is amended to read as follows:

(c) UNPAID LEAVE PERMITTED.—

(1) IN GENERAL.—Except as provided in subsection (d), leave granted under subsection (a) may consist of unpaid leave.

(2) RELATIONSHIP WITH FAIR LABOR STANDARDS ACT OF 1938 FOR EMPLOYERS.—Where an employee is otherwise exempt under regulations issued by the Secretary pursuant to section 13(a)(1) of the Fair Labor Standards Act of 1938 (29 U.S.C. 213(a)(1)), the compliance of an employer with this title by providing unpaid leave shall not affect the exempt status of the employee under such section.

(3) RELATIONSHIP WITH FAIR LABOR STANDARDS ACT OF 1938 FOR SMALL BUSINESSES.—

(A) IN GENERAL.—Where an employee is otherwise exempt under regulations issued by the Secretary pursuant to section 13(a)(1) of the Fair Labor Standards Act of 1938 (29 U.S.C. 213(a)(1)), the granting of unpaid family leave by a small business employer shall not affect the exempt status of the employee under such section.

(B) DEFINITIONS.—As used in this paragraph:

(i) SMALL BUSINESS EMPLOYER.—The term "small business employer" means a person that—

(I) is an employer (as defined in section 3(d) of the Fair Labor Standards Act of 1938 (29 U.S.C. 203(d))); and

(II) is not an employer (as defined in section 101(4)).

(ii) UNPAID FAMILY LEAVE.—The term "unpaid family leave" means—

(I) unpaid leave that may be taken for one or more of the reasons described in subparagraph (A) or (B) of section 102(a)(1), and may be taken as intermittent leave or leave on a reduced leave schedule; and

(II) restoration to employment, and continued coverage under a group health plan, in accordance with section 104.

(4) EFFECTIVE DATE.—Notwithstanding section 405(b)(1)—

(A) paragraph (2), and the application of this title for purposes of paragraph (2); and

(B) paragraph (3), and the application of the provisions described in subclause (I) or (II) of paragraph (3)(B)(ii) for purposes of paragraph (3),

shall be deemed to have taken effect on June 25, 1938.

(5) REPEAL.—Effective 1 year after the date of enactment of this Act, paragraph (3) is repealed.

DANFORTH AMENDMENT NO. 14

Mr. DANFORTH proposed an amendment to the bill (S. 5), supra, as follows:

On page 24, line 19, strike "107(b)" and insert "107(c)".

On page 27, line 10, strike "(d)" and insert "(e)".

On page 27, line 17, strike "(b)" and insert "(c)".

On page 27, between lines 24 and 25, insert the following:

(b) MEDIATION.—

(1) FINDING.—Congress finds that cooperative mediation of complaints is a more timesaving and cost-effective method of resolving disputes than litigation of civil actions.

(2) INITIATION OF MEDIATION IN ACTION BROUGHT BY SECRETARY.—

(A) NOTICE OF ACTION AND AVAILABILITY OF MEDIATION.—

(i) NOTICE.—If the Secretary determines that there is reasonable cause to believe that an employer has violated this title and that the Secretary will file an action against the employer under subsection (c) or (e), the Secretary shall inform—

(I) the employer that the employer may, within 7 days, request that the complaint be referred to the Service for mediation; and

(II) the employee aggrieved by the violation, and the employer, that the employee may become a party to mediation under this paragraph.

(ii) LIMITATION ON ACTION.—The Secretary shall not file such an action earlier than 7 days after the date on which the employer is so informed.

(B) REFERRAL AND NOTIFICATION.—

(i) REFERRAL TO MEDIATOR OTHER THAN THE SERVICE.—In lieu of receiving mediation services from the Service, the Secretary and the employer (and the employee, if the employee elects to become a party) may agree in writing to refer the complaint to a mediator (other than the Service) that has been mutually agreed to by the parties, for mediation in accordance with regulations promulgated by the Service pursuant to this subsection. A copy of the agreement to mediate shall be served upon the Service and the employee.

(ii) NOTIFICATION OF COSTS, FEES, AND EXPENSES.—Before the commencement of mediation services under this subparagraph, the mediator shall notify the parties and the Service in writing of the per diem costs and any other fees and expenses the mediator may reasonably be expected to incur in providing such services. The cost of mediation services shall be shared as mutually agreed by the parties.

(C) PROHIBITION ON FILING OF ACTION.—

(i) IN GENERAL.—The Service, within 7 days of receipt of the mediation request, shall inform the employee that mediation has been requested. If the employer requests mediation by the Service under subparagraph (A) or agrees to mediation by a mediator under subparagraph (B), the Secretary may not file an action against the employer under subsection (c) or (e), and the employee may not file an action against the employer under subsection (a)(2), until the completion of the mediation.

(ii) INJUNCTIVE RELIEF.—Nothing in this subsection shall prevent the Secretary from filing an action under subsection (e), or the employee from filing an action under subsection (a)(2), with respect to any claim for temporary injunctive relief.

(iii) LIMITATIONS.—If—

(I) the time for the Secretary or the employee to file an action described in clause (i) would otherwise lapse during the 7-day period described in subparagraph (A);

(II) the employer does not request mediation by the Service under subparagraph (A); and

(III) the parties do not agree to mediation by a mediator under subparagraph (B),

the time for the Secretary or the employee to file such an action shall be tolled until 7 days after the end of the period.

(3) INITIATION OF MEDIATION.—

(A) NOTICE OF ACTION AND AVAILABILITY OF MEDIATION.—No employee shall bring a civil action against an employer under subsection (a)(2) unless the employee has given the employer at least 7 days written notice that the employee intends to file such action and informed the employer that either party may request that the complaint be referred to the Service for mediation pursuant to the procedures set forth in this subsection.

(B) REFERRAL AND NOTIFICATION.—

(i) REFERRAL TO MEDIATOR OTHER THAN THE SERVICE.—In lieu of receiving mediation services from the Service, the employer and the employee may agree in writing to refer the complaint to a mediator (other than the Service) that has been mutually agreed to by the parties, for mediation in accordance with regulations promulgated by the Service pursuant to this subsection. A copy of the agreement to mediate shall be served upon the Service and the Secretary.

(ii) NOTIFICATION OF COSTS, FEES, AND EXPENSES.—Before the commencement of mediation services under this subparagraph, the mediator shall notify the parties and the Service in writing of the per diem costs and any other fees and expenses the mediator may reasonably be expected to incur in providing such services. The cost of mediation services shall be borne by the party that requested the mediation, unless the parties mutually agree to share the costs.

(C) PROHIBITION ON FILING OF ACTION.—

(i) IN GENERAL.—The Service, within 7 days of receipt of the mediation request, shall inform the Secretary that mediation has been requested. If either party requests mediation by the Service under subparagraph (A), or if the parties agree to mediation by a mediator under subparagraph (B), the Secretary may not file an action against the employer under subsection (c) or (e), and the employee may not file a civil action against the employer under subsection (a)(2), until the completion of the mediation.

(ii) INJUNCTIVE RELIEF.—Nothing in this subsection shall prevent the Secretary from filing an action under subsection (e), or the employee from filing a civil action under subsection (a)(2), with respect to any claim for temporary injunctive relief.

(iii) LIMITATIONS.—If—

(I) the time for the Secretary or the employee to file an action described in clause (i) would otherwise lapse during the 7-day period described in subparagraph (A);

(II) neither party requests mediation by the Service under subparagraph (A); and

(III) the parties do not agree to mediation by a mediator under subparagraph (B),

the time for the Secretary or the employee to file such an action shall be tolled until 7 days after the end of the period.

(4) REGULATIONS.—

(A) ISSUANCE, AMENDMENT, AND RESCISSION.—After providing an opportunity for public comment, the Service shall issue, and may amend or rescind, regulations to carry out the provisions of this subsection relating to mediation of complaints. The Service shall issue the regulations not later than 6 months after the date of enactment of this subsection.

(B) MEDIATION IN ACCORDANCE WITH REGULATIONS.—Mediation provided by the Service under subparagraph (A), or by another mediator under subparagraph (B), of paragraph (2) or (3), shall be provided in accordance with the regulations.

(C) MEDIATION SERVICES.—The regulations shall specify the form and manner of, and the procedures for providing, the mediation services provided under this subsection.

(5) DUTY OF MEDIATOR.—It shall be the duty of the mediator to communicate promptly with the parties and use best efforts, by mediation, to reach an agreement resolving the complaint.

(6) REPRESENTATIVE.—During mediation, the employee and the employer may be represented by legal counsel or another representative of their choice.

(7) RESOLUTION.—

(A) MANNER.—If the complaint is resolved through mediation, the complaint shall be resolved in a manner that is mutually agreeable to the parties, including a settlement agreement or voluntary withdrawal of the complaint (by the employee or the Secretary, as appropriate). The resolution of the complaint shall be recorded in writing. In no case shall the mediator have the power to dismiss a complaint.

(B) EFFECT OF AGREEMENT ON RESOLUTION.—

(i) MEDIATION BETWEEN EMPLOYER AND EMPLOYEE.—Once the employee and employer have agreed on a resolution of the complaint following mediation initiated under paragraph (3), the mediator shall so advise the Secretary. The Secretary shall take no further action on the matter that is the subject of the mediation as the matter affects the employee or employees.

(ii) MEDIATION INVOLVING THE SECRETARY.—Once the parties have agreed on a resolution of the complaint following mediation initiated under paragraph (2), the mediator shall so advise the employee, unless the employee is a party to the mediation. No employee may bring an action under subsection (a)(2) after the parties have recorded such a resolution.

(8) COMPLETED MEDIATION.—

(A) RESOLVED COMPLAINT.—The mediation shall be deemed to be completed on the date that the resolution of the complaint is recorded, as provided for in paragraph (7)(A).

(B) UNRESOLVED COMPLAINT.—If a complaint that has been referred to mediation has not been resolved by settlement, withdrawal of complaints, or otherwise within 45

days of receipt of the complaint by the Service or other mediator, and the parties do not agree in writing, with the consent of the mediator, to further extend the mediation process, the mediation shall be deemed to be completed.

(9) CIVIL ACTIONS FOLLOWING MEDIATION.—

(A) RIGHT TO BRING ACTION.—If mediation has been completed without resolution, as described in paragraph (8)(B), the employee may file a civil action under subsection (a)(2), or the Secretary may file an action under subsection (c) or (e).

(B) LIMITATIONS.—If—

(i) mediation is initiated under paragraph (2) or (3); and

(ii) the time for the employee or the Secretary to file an action described in subparagraph (A) would otherwise lapse—

(I) not earlier than the first day of the 7-day period described in paragraph (2)(A) or (3)(A), as appropriate; and

(II) not later than the completion of the mediation,

the time for the employee or Secretary, as appropriate, to file such an action shall be tolled until 7 days after the completion of the mediation (including any referral under subparagraph (C)).

(C) REFERRAL FOR ADDITIONAL MEDIATION.—The court in which the action is filed shall have the discretion to refer the complaint to the Service or the other mediator used by the parties for an additional 30 days of mediation pursuant to this subsection.

(D) CONSTRUCTION.—Nothing in this subsection shall be construed to limit the authority of the court to attempt to resolve the case under the authority of the court or dispute resolution procedures established by the court.

(10) AGREEMENTS.—

(A) AGREEMENT INVOLVING SECRETARY.—The employee shall be provided a copy of any settlement agreement, or other agreement resolving the complaint, between the parties after mediation initiated under paragraph (2). Any such agreement shall be kept confidential by the mediator, the employer, the employee, and other parties to the agreement unless all parties agree otherwise in writing.

(B) AGREEMENT BETWEEN EMPLOYEE AND EMPLOYER.—Any settlement agreement, or other agreement resolving the complaint, between the employee and the employer after mediation initiated under paragraph (3) shall be considered confidential and shall not be provided to the Service, the Secretary, or any other person, unless all parties to the mediation so agree in writing.

(11) COMMUNICATIONS.—

(A) CONFIDENTIALITY.—Whether or not a complaint that has been referred to mediation is resolved, all communications, oral or written, (including memoranda, work product, transcripts, notes, or other materials) made by the Secretary, the employee, the employer, or the mediator in or in connection with the mediation that relate to the controversy being mediated shall be kept confidential by the participants in the mediation.

(B) PROHIBITION ON MAKING COMMUNICATIONS AVAILABLE.—Such communications shall not be made available by the mediator, or parties to the mediation, to any person not participating in the mediation, including the Secretary in any case in which the Secretary is not a participant.

(C) PROHIBITION ON USE OF COMMUNICATIONS AS EVIDENCE.—Such communications may not be used as evidence in any other proceeding, as provided for in paragraph (12).

(D) FINE.—Any person, including any official of the Department of Labor, who discloses information in violation of this subsection shall be fined not more than $5,000.

(12) DISCLOSURE.—

(A) IN GENERAL.—Communications referred to in paragraph (11), shall not be disclosed voluntarily, and, pursuant to this subsection, shall not be subject to disclosure through discovery or compulsory process in any investigatory, arbitral, judicial, administrative or other proceedings, unless—

(i) all parties to the mediation agree, in writing, to waive the confidentiality of such communications; or

(ii) the communications involve statements, materials, and other tangible evidence, that—

(I) are otherwise not privileged and subject to discovery; and

(II) were not prepared specifically for use in mediation.

(B) DEMAND FOR DISCLOSURE.—If any demand for disclosure, including a request pursuant to discovery or other legal process, is made upon the mediator, the Service, or the Secretary, regarding the mediation of a complaint, the mediator, the Service, or the Secretary, as appropriate, shall immediately make reasonable efforts to notify all parties to the mediation of the demand.

(13) ACTION FOR ENFORCEMENT.—A party to an agreement made pursuant to mediation under this subsection may bring any action to enforce the agreement in any Federal or State court of competent jurisdiction.

(14) DEFINITION.—As used in this subsection, the term "Service" means the Federal Mediation and Conciliation Service.

(15) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as may be necessary to carry out the purposes of this subsection for fiscal year 1994 and each subsequent fiscal year.

On page 27, line 25, strike "(b)" and insert "(c)".

On page 28, line 20, strike "(c)" and insert "(d)".

On page 29, line 11, strike "(d)" and insert "(e)".

On page 29, line 22, strike "(e)" and insert "(f)".

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON VETERANS' AFFAIRS

Mr. MITCHELL. Mr. President, the Committee on Veterans' Affairs would like to request unanimous consent to hold a markup after the first rollcall after 10 a.m. on Wednesday, February 3, 1993. The markup will be held in the reception room.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON RULES AND ADMINISTRATION

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Committee on Rules and Administration be authorized to meet during the session of the Senate on Wednesday, February 3, 1993, at 9:30 a.m., to hold hearings on Senate committee funding resolutions. The committee will receive testimony from the chairman and ranking members of the following committees: Banking, Housing, and Urban Affairs; Energy and Natural Resources; Aging; Organization of Congress; Agriculture, Nutrition, and Forestry; Armed Services; Intelligence; Governmental Affairs; and Veterans Affairs.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Committee on Banking, Housing, and Urban Affairs be authorized to meet during the session of the Senate, Wednesday, February 3, 1993, at 10 a.m. to conduct a hearing on community development banking.

The PRESIDING OFFICER. Without objection, it is so ordered.

SELECT COMMITTEE ON INTELLIGENCE

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Select Committee on Intelligence be authorized to meet during the session of the Senate on Wednesday, February 3, 1993, at 10 a.m. to hold an open confirmation hearing on the nomination of R. James Woolsey to be Director of Central Intelligence.

COMMITTEE ON ARMED SERVICES

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Committee on Armed Services be authorized to meet on Wednesday, February 3, 1993, at 2 p.m., in open session, to receive an intelligence community briefing on developments in the former Soviet Union.

The PRESIDING OFFICER. Without objection, it is so ordered.

ADDITIONAL STATEMENTS

THE SESAME STREET PRESCHOOL EDUCATION PROGRAM

• Mr. DASCHLE. Mr. President, last year the Senate, with broad support, approved legislation that authorized funding for the Corporation for Public Broadcasting [CPB] for fiscal years 1994 through 1996. In large part, this support came from a strong belief on the part of many Senators that public broadcasting can play a vital role in the improvement of our Nation's educational system, particularly in ensuring that children arrive at school ready to learn.

I am pleased to announce to my colleagues a project that is being supported by the Corporation and public broadcasting in my State of South Dakota. The "Sesame Street Preschool Education Program," and "PEP Project," was developed by the Children's Television Workshop with support from CPB, and is being coordinated by the Children's Television Workshop, South Dakota Public Broadcasting and South Dakota's Extension Home Economists. Its purpose is to provide child-care providers with training and support materials to aid in the development of learning skills and curiosity in children between the ages of

2 and 5. The project is designed to help preschool children have fun while they learn and develop an enthusiasm and love for reading. Using the combined power of books and television, the program will develop the learning abilities and natural curiosity of thousands of South Dakota preschool children.

The "PEP Project" is part of South Dakota Public Broadcasting's "Learning to Learn" campaign. The goal of "Learning to Learn" is to bring people and resources together to help child care providers prepare preschoolers for school. Through the project children learn about the environment, geography, cultural diversity, people with special needs, cooperation, pride, self-esteem, health and safety practices, and various careers. The "PEP Project" combines the use books and television with additional learning materials and activities designed to address these and other issues.

Today South Dakota Public Broadcasting will host a day-long celebration of the "PEP Project" with South Dakota State legislators and their children. The event will provide the legislators with demonstrations of the project and will serve to increase awareness of this very innovative program.

Mr. President, the "PEP Project" is just one example of the educational benefits that are part of public broadcasting's commitment to improving education in the United States. Congressional support for CPB enables the corporation to assist at both the national and local levels in the development of new educational programs and services. I want to congratulate both the Corporation for Public Broadcasting and South Dakota Public Broadcasting, and all involved in this program, for their efforts in addressing this critical need in our society.•

HONORING THE MAN WHO BROUGHT BEAN SOUP TO THE SENATE

• Mr. SIMON. Mr. President, William Jennings Bryan was barely 30 when he took the floor of the House of Representatives for his maiden speech as a Congressman. The subject was legislation to reduce the tariff on wool and he spoke for 3 hours.

Bryan told young Everett McKinley Dirksen of Pekin, IL, always to "talk to the last row and everybody else will hear you."

As we all know, Dirksen parlayed his own oratorical skills into a successful political career. Like Bryan, he tried and failed to make it to the White House, but this central Illinoisan vigorously opposed Roosevelt's New Deal, but eventually rose to become the Republican leader of the U.S. Senate, and no one in the last row of the galleries ever failed to hear what Dirksen had to say.

To his credit, Dirksen became one of the most respected Republican leaders of his day and was a key player in the passage of the landmark Civil Rights Act of 1964.

Dirksen came to this Chamber in 1950 and his loquacious style earned him the nickname, "the Wizard of Ooze." As I focus my efforts to this Congress on the passage of a balanced budget constitutional amendment, I recall the fiscal conservative quipping: "A billion here, a billion there, and pretty soon you're talking real money."

By siding with the cause of justice, Dirksen was elected minority leader in 1959, riding the prestige of his efforts on the Civil Rights Act, busing and other progressive legislative efforts. Historians generally concede that without Dirksen's backing, such legislation almost certainly would not have passed. He remained a true conservative on foreign policy, however, fully supporting Presidents Johnson and Nixon on Vietnam.

I remember in 1948 when most politicos in Illinois thought that Dirksen was through when he quit the House due to an eye ailment. Pekin's most famous citizen came roaring back, as he was later identified as a Taft Republican in 1952 who quickly became an Eisenhower loyalist. Dirksen was a vigorous conservative and anti-Communist and he even encouraged the witchhunts of Joseph McCarthy.

Let me leave you with this story. We are all familiar with how Dirksen and his pal David Burpee of W. Atlee Burpee Seed Co. proposed to make the marigold the national flower in the 1950's, but did you know, Mr. President, and I know the Senate pro tempore will enjoy this anecdote, that Senator Dirksen is responsible for putting bean soup on the menu in the Senate dining room?

"It was many years ago," Senator Dirksen once wrote, "that a very dignified and slightly belligerent Senator took himself to the Senators' dining room to order bean soup, only to discover that there was no bean soup on the menu. This dereliction on the part of the Senate dining room cooks called for an immediate declaration of war and the Senator promptly introduced a resolution to the effect that henceforth not a day should pass when the Senate was in session and the restaurant open that there would not be bean soup on the calendar."

The Senator obviously got his way. That he thought eating beans gave Senators more energy for filibusters probably was right on the money.

Mr. President, Philip A. Grant, Jr., has written to me on the late Senator Dirksen and I ask that his correspondence be printed in the CONGRESSIONAL RECORD in full.

The correspondence follows:

THE ELECTION OF EVERETT M. DIRKSEN OF ILLINOIS AS SENATE REPUBLICAN LEADER

On January 7, 1957 Senator William F. Knowland of California announced that he would not be a candidate for re-election to a third term in 1958. Knowland since 1953 had occupied the post of Republican floor leader. The Californian's decision to relinquish his Senate seat meant that there would be a vacancy in the leadership position at the opening of the next Congress.

It was widely assumed that Senator Everett M. Dirksen of Illinois would be favored to succeed Knowland in the capacity of Floor Leader. Dirksen, sixty-two years of age and an alumnus of the University of Minnesota Law School, had served eight terms in the House of Representatives prior to entering the Senate in 1951. Re-elected to the Senate by 357,469 votes in November 1956, Dirksen had been unanimously chosen by his Republican colleagues to become Assistant Floor Leader (Whip) in January 1957.

Under ordinary circumstances Dirksen's elevation to the floor leadership would have been accomplished with minimal difficulty. Between January 1957 and January 1959, however, there had been drastic changes in the Republican membership of the Senate. Over this twenty-four month period one Republican had died, six had opted to retire, and ten had been defeated by Democrats in their quests for re-election. Thus, of the forty-eight Republican incumbents of 1957, only thirty-one were still serving in 1959.

Dirksen throughout his long and eventful tenure on Capitol Hill had been firmly identified with the conservative wing of the Republican Party. It was anticipated that he commanded the support of eleven of the thirteen Republicans from the Midwest, four of the five Republicans from the West, and Senator John Marshall Butler of Maryland, nearly all of whom were thoroughly in accord with his well-documented conservative voting record. Dirksen also enjoyed the backing of Styles Bridges of New Hampshire, the senior Republican in the Senate and Chairman of the G.O.P. Policy Committee.

Committing themselves to oppose Dirksen's bid for the floor leadership were seven moderate Republicans from the Northeast, six of whom were relatively new in terms of seniority. Joining the seven northeasterners were three other comparatively junior Republicans, John Sherman Cooper of Kentucky, Frank Carlson of Kansas, and Thomas H. Kuchel of California. These ten gentlemen complained that for many years the Republican leaders in the Senate had vigorously resisted change and were perceived as unduly negative, if not obstructionist, in their outlooks.

Inasmuch as there were thirty-four Republicans in the Senate, eighteen votes would be required to elect a new Floor Leader. It appeared that seventeen Republicans were sympathetic to Dirksen's candidacy and ten Republicans wished to designate a more moderate senator for Floor Leader. While it was certain that Dirksen would persevere in his drive to win the Leadership position, there was considerable doubt as to the identity of his prospective opponent from within the ranks of the moderate bloc of Senate Republicans.

On December 30, 1958 the moderate Republicans endorsed Senator Cooper of Kentucky as their candidate to challenge Dirksen. Fifty-seven years old and a graduate of Yale and Harvard Law School, Cooper had begun his career in public service as a member of the Kentucky Legislature in 1928. In 1946 and 1952 he had been elected to fill unexpired terms in the Senate, but he had been defeated for re-election both in 1948 and 1954. After serving as Ambassador to India in 1955 and 1956, Cooper had again won a Senate contest in 1956.

Cooper, dignified and scholarly, had been primarily interested in foreign affairs during his years in the Senate. As an internationalist, he consistently advocated a bipartisan foreign policy during the Administrations of Presidents Harry S. Truman and Dwight D. Eisenhower. Representing a state where Democrats outnumbered Republicans by a margin of nearly three to one, Cooper deliberately refrained from partisanship and was frequently aligned with the bulk of his Democratic colleagues on economic and social issues.

Dirksen, a skilled parliamentarian and legendary orator, was among the most extroverted Republicans on Capitol Hill. At the 1952 Republican National Convention, as a fervent supporter of the late Senator Robert A. Taft of Ohio, Dirksen had attracted nationwide attention by publicly ridiculing Governor Thomas E. Dewey of New York, the principal spokesman of moderate Republicans. A professional politician in every respect, Dirkesn was an avid participant in floor debates and an outspoken apologist for causes long espoused by conservative Republicans.

There were numerous important questions on which Dirksen and Cooper were in sharp disagreement. The two senators had differed on such major issues as the proposed Bricker Amendment to the Constitution, the censure of Senator Joseph R. McCarthy of Wisconsin, and the liberalization of the so-called filibuster rule. Dirksen and Cooper were also on opposing sides on the transfer of control of the tidelands oil reserves to the states, the extension of unemployment compensation, the Hells Canyon Dam and Hydroelectric Power Project, the Atomic Energy Bill, and increased appropriations for the Tennessee Valley Authority (TVA).

Dirksen not only argued that his voting record accurately reflected the conservative attitudes of Republicans both in Congress and throughout the nation, but also that over two decades he had acquired the necessary experience to exercise forceful leadership in the Senate. While not disavowing his conservative approach on nearly every issue of consequence, Dirksen did agree that one of the moderate Repubicans should be chosen to replace him as party Whip.

By contrast Cooper pointed out that, because of the unfavorable image projected by Republicans, the Democrats had controlled the Senate for twenty-two of the twenty-six years between 1932 and 1958. The Kentuckian, seriously concerned about the precarious status of the Republican Party, emphasized that Senate Republicans had been humiliated in the congressional elections of 1958. Consequently, Cooper insisted that the Republican party turn to new leaders.

After Cooper became an active contender for the floor leadership, two uncommitted Republicans announced which of the two candidates they favored. Cooper obtained the support of his Kentucky colleague, Thurston B. Morton, who otherwise would definitely have voted for Dirksen. Morton's endorsement of Cooper was offset, however, by the decision of Senator J. Glenn Beall of Maryland, ostensibly a moderate Republican, to commit himself to Dirksen.

The Republican Conference assembled in the Capitol Building on January 7. While Dirksen had apparently secured the necessary eighteen votes for victory, as many as four Republican senators had declined to endorse either of the two G.O.P. candidates. By secret ballot Dirksen defeated Cooper for the position of Floor Leader by a 20-14 tabulation. There was considerable evidence to suggest that the two additional votes for Dirksen were cast by Senators Norris Cotton of New Hampshire and John J. Williams of Delaware. While Cooper was obviously disappointed by his failure to outpool Dirksen, he and his fellow moderates were somewhat consoled by the election of Senator Kuchel of California as the new Republican Whip.

There were three principal reasons tending to explain why Dirksen defeated Cooper in the contest for Republican Floor Leader. They were as follows: 1) Cooper's conspicuous lack of seniority; 2) The comparative stature of the rival candidates within the Senate; 3) Dirksen's political and geographic identification with the Midwest.

By January 1959 Dirksen was beginning his twenty-fifth year on Capitol Hill. Indeed Dirksen had accumulated more seniority in Congress than any other Republican member of the Senate. A review of the backgrounds of the fifteen gentlemen chosen as G.O.P. Floor Leaders in the present century established that each such individual has spent an average of twenty years in Congress prior to his election. By contrast Cooper's senatorial experience consisted of a mere six years, which twice had been interrupted by defeats at the polls in his home state of Kentucky. At the time he announced his intention of challenging Dirksen, Cooper's continuous tenure in the Senate was limited to only two years. Dirksen, having never lost a congressional race since launching his first campaign in the early nineteen thirties, enjoyed a distinct advantage over Cooper based on the factor of his twenty-four years of seniority.

Almost without exception Republican Senate Leaders have served as Acting Leaders, Assistant Leaders (Whips), or as chairmen of important standing committees. Senators Wallace H. White and Knowland were Acting Leaders prior to being elevated to the floor leadership. In addition to Dirksen Senators Charles Curtis, Kenneth S. Wherry, and Hugh D. Scott were Whips who subsequently acceded to the post of Floor Leader. Other Republican Floor Leaders had previously or concurrently occupied key committee chairmanships. Among the Floor Leaders who presided over committees were Senators Shelby M. Cullom (Foreign Relations), Henry Cabot Lodge (Foreign Relations), James E. Watson (Interstate Commerce), Charles L. McNary (Agriculture and Forestry), Robert A. Taft (Labor and Public Welfare), and Robert J. Dole (Finance). Moreover, Scott and Dole were former Chairmen of the Republican National Committee, and Taft had been Chairman of the Senate Republican Policy Committee. Cooper, unlike Dirksen, had never been chosen by his G.O.P. colleagues to hold a leadership position, and, unlike the bulk of the other Republican Senate Leaders, had not been afforded the opportunity to chair a standing committee.

Throughout the twentieth century Dirksen was one of the many illustrious midwesterners who rose to positions of prominence in the Senate. Midwesterners who became Republican Floor Leaders were Senators Cullom of Illinois, Curtis of Kansas, Watson of Indiana, Wherry of Nebraska, Taft of Ohio, and Dole of Kansas. Two distinguished Republicans from the Midwest, Albert B. Cummins of Iowa and Arthur I. Vandenberg of Michigan, were Presidents pro tempore of the Senate, and two others, Simon D. Fess of Ohio and Robert P. Griffin of Michigan, were designated G.O.P. Whips. It was noteworthy that thirteen of the thirty-four Republicans in the Senate in 1959 were from the Midwest, thereby providing Dirksen with a solid base of regional support. Since Dirksen had a longstanding identification with the most populous midwestern state and came from a section of the country which for many decades had largely dominated the Republican Party, it was not difficult to understand why he was likely to wield more influence than Cooper. Cooper represented a traditionally Democratic state located within the confines of a region with a pronounced Democratic heritage.•

TRIBUTE TO LEITCHFIELD

• Mr. McCONNELL. Mr. President, I rise today to pay tribute to Leitchfield in Grayson County.

Leitchfield is a small town located in central Kentucky, almost directly south of Louisville. Even though Leitchfield is small, it made a name for itself in the region 20 years ago, and other small communities are still trying to catch up.

Leitchfield is a progressive town, and it was this progressiveness that helped establish a solid industrial economic base for the county. Leitchfield built an industrial park in 1967, and currently there are more than 30 manufacturing firms in Grayson County. These industries provide jobs and economic stability for the community and its residents.

Farming still makes up a large portion of the region's economy. The residents of Leitchfield are the reasons for the growth of the town. Their enthusiasm and hard work has made what the town is today, one of Kentucky's finest towns.

Mr. President, I ask that a recent article from Louisville's Courier Journal be submitted in today's CONGRESSIONAL RECORD.

The article follows:

LEITCHFIELD

(By Beverly Bartlett)

Perhaps it could have been more.

Perhaps with a little more luck or effort. Perhaps if the people had been more savvy at selling themselves.

Perhaps if they could have claimed a geological wonder or the birthplace of a great leader.

Perhaps then, Leitchfield could have been more.

But there is little wrong, it seems, with what Leitchfield is—a sort of slow-paced county seat with enough industry for residents to complain about the late afternoon "traffic jam" and enough perspective to laugh a little as they complain.

They could use more hotel rooms. They're still waiting for a planned bypass to allow trucks to avoid the square when traveling from the Western Kentucky Parkway to the industrial park.

But people here are undaunted by such drawbacks. This is a town that seems sure of itself, a progressive practical place whose leaders more than two decades ago set about to do the work that many county seats are just today beginning.

By all accounts, they did the work well.

In 1967, they laid out an industrial park and began finding the industry that now fills it. And shortly after the industrial council bought the park, the city found the federal

money to build a 26-mile gas line, an umbilical cord for industry. They also embraced the Western Kentucky Parkway though they knew it had made it easier for local shoppers to take their business to Elizabethtown or Louisville.

"Back before industrial recruiting or economic development was fashionable they attracted a lot of industry," said Alan Bernard, president of one of the relatively few industries that did not need recruiting, Mid-Park Inc., a home-grown company that makes highway construction products.

"I keep telling everyone that's when we started to grow, because they set the foundation," Mayor Sherrill Watson said with a gesture that was obviously supposed to take in all the people of his time—a time not so long ago in the scope of life, but back to the dawn of modern-day Leitchfield.

It was a day before residents could use factory work to supplement their farm income, which still sustains the county. It was a day when the community's inadequate natural gas supply tapered off when the temperature dropped below zero. It was time when the city couldn't afford to provide a car for the night police officer.

It was about the time that Nancy and Jodie Hall moved from Elizabethtown to Leitchfield and felt to some extent as if they'd moved into a different world.

I really had to teach myself to slow down, said Nancy Hall, who was surprised to find she couldn't even buy a loaf of bread on Thursday afternoons or Sundays. But she adjusted. "I bought my bread on Saturdays. It didn't hurt me."

And it was a time when the community's biggest claim to fame dated to the 1941 birth of Porter and Beulah Lashley's quadruplets—the first in Kentucky Newspaper accounts followed every step of their development.

"Lashley Quads Meet Parents 1st Time, and Are Not Amused," said one headline. "John Weakest Quad At Birth, Now Is the Loudest Shouter," said another. (John Lashley, the only boy among the four died last year while awaiting a heart transplant. The three girls, Martine, Mildred, and Beulah, survive but no longer live in Leitchfield.)

By the early 1960s, community leaders had begun dreaming of a more bustling place.

"They had" Watson says, "pretty good vision back in those days."

Former Mayor James D. Beville, who led the city for 23 years and sprinkled through the 1950s, '60's and '70s, said he and other leaders were motivated not so much by a vision of the future as they were by a clear view of the present.

"We wanted work for people," he said. If they wanted to stay here, we wanted to find something for them to do. And we did."

But Beville says he never really realized what they were setting in motion. "It's grown a lot faster than anybody had any idea. Any idea at all.

Even now Beville's role in the community's growth doesn't seem to overwhelm the 86-year-old former painter. He is proudest of the good deal he arranged on City Hall. The city paid $60,000 for a building he swears was worth twice that.

Gesturing at the kitchen cabinets that fill a break room where city employees can make coffee and relax, he looks wistful. "See all this stuff," he says. "I didn't have any of this stuff."

But he and the others did have enthusiasms, illustrated by a Leitchfield banker's 1972 boast to a reporter that, if other cities weren't growing as fast as Leitchfield. "they're not trying hard enough."

They had the gumption and spunk to try to recruit a Toshiba microwave-oven plant in the early 1970s. William R. Vincent, a local businessman, said Leitchfield leaders dined with Japanese executives at Rough River State Resort Park in a time when microwave ovens still seemed futuristic and when few Central Kentucky leaders has given much thought to the Japanese.

Community leaders wanted employment, Vincent said. "They didn't care where they came from or what they did as long as they got a check."

The Toshiba plant never materialized, but other companies lured by low wages and clean natural gas, came stayed and expanded.

The state's list of manufacturing firms in Grayson County includes more than 30 establishments, nearly a third of which have been in operation for more than 20 years. At least seven now employ 200 or more people, the Grayson County Chamber of Commerce says.

And with products ranging from French cheese to light bulbs, from golf clubs to honey-extracting equipment it's an impressive example of industrial vitality and diversity for a county of just more than 20,000.

It means that, when companies have folded, the loss meant only a small, temporary dent in the county's employment, a dent easily filled when a new plant moved into the old building. And it means that local leaders feel comfortable with the words "recession proof."

"We've been recession-proof," said former Circuit Judge Kenneth Goff, who lead early industrial growth efforts. "They talk about recession, but our industry, we've been busy."

Mid-Park's Bernard says, however, that unemployment has risen some during the recent national downturn, and the community could use another company employing 400 or 500 people; even though it would probably drive up wages.

Wages are still low. Grayson County manufacturing wages averaged about $200 a week less than the Kentucky average in 1988, according to the state Economic Development Cabinet.

But Bernard says the wages aren't as low as they seem, given that Leitchfield workers can live well on less money than workers in suburban Chicago, for example.

"We are a Wal-Mart town. . . . The people here can live comfortably and very happy and very contently on those kind of wages, if they're treated fairly," he said.

The Walter T. Kelley Co. Inc. which says it's the second-oldest and second largest beekeeping equipment manufacturer in the nation, apparently has kept employees content.

Many of the company's 75 workers were hired a quarter of a century ago by Walter T. Kelley, the "Bee Man." Among them was Doris Pharris, who became president when Kelley died in 1986. She started working there in 1953 just a year after Kelley moved the company to Grayson County from Paducah.

"He decided to look for a more rural area." Pharris said.

And like many other companies that came after his, Kelley's company and the man himself became a part of the place, so much so that his will provided for the company to continue as an operating trust for Twin Lakes Regional Medical Center, the local hospital, for 20 years after his death.

Local people say that's just an example of Grayson County's community spirit and cooperative style. Vincent says it's an attitude that has served the area well, when neighboring counties struggled, internally.

"If you bring an industry into the county, everyone is top dog," he says. Some counties can't seem to understand that."

And so maybe Leitchfield could have been more, but think how easily it could have been less.•

TRIBUTE TO THE POP WARNER CHEERLEADERS FROM FREEHOLD, NJ

• Mr. BRADLEY. Mr. President, it is a most impressive accomplishment to be selected to participate in the Presidential Inaugural Parade, and I want to tell my colleagues about the Pop Warner Cheerleaders from Freehold, NJ. These girls, ages 11 to 13, were the youngest participants in this national event, and they gave the performance of a lifetime.

Their selection for this prestigious honor is public tribute to their dedication, hard work, and talent, and I shared the pride of all New Jerseyites when the cheerleaders performed for our new President on January 20. I know all the spectators admired and enjoyed their outstanding presentation.

On February 1, the Governor and General Assembly of New Jersey formally recognized the Greater Freehold Pop Warner Cheerleaders. It is my pleasure today, Mr. President, to applaud their singular achievement on Inauguration Day.•

TAOS RANGER DISTRICT

• Mr. DOMENICI. Mr. President, I am pleased to rise today to join the other Senator from New Mexico, Senator BINGAMAN, who has sponsored legislation for conveyance of property from the Department of Agriculture to the town of Taos, NM.

The property to be conveyed has been and is today locally referred to as the "Old Taos Ranger District Office and Warehouse," which is a parcel located within the town of Taos County, NM. This property had long served the needs of the U.S. Forest Service, providing an office and warehouse that became commonly known in the region. As the needs of the local Forest Service office changed, a more functional facility was required. Consequently, the ranger office vacated the old ranger station property and moved the office to a new location.

This property within the established town has lost its utility to the Federal Government and as a federally owned property has limited uses for the surrounding community. The town's purchase of this property will remove the property from the Federal inventory, and allow the local government to select a use that will better serve the people of Taos.

Additionally, the bill will provide a special fund in the Treasury for the purpose of the Secretary of Agriculture

to acquire lands and administrative facilities within New Mexico.●

SUPPORT OF THE RESOLUTION ON THE EQUAL RIGHTS AMENDMENT

● Mrs. BOXER. Mr. President, today I rise in support of Senator KENNEDY's resolution on the equal rights amendment. When I entered Congress 10 years ago, one of my first actions was to vote in favor of the ERA. Though years have passed and I now speak from the Senate, I am still fighting for the equal rights of women.

Women continue to face serious obstacles: harassment in the workplace, the threat of violence, of poverty, and of the chipping away at our reproductive freedom. As we gradually witness barriers to equal opportunity fall, the many that remain become more blatant and intolerable, continuing to undermine justice and productivity in our society. America cannot afford to have our progress toward genuine equality, regardless of gender, threatened. Passage of the ERA, 24 simple words, is essential to ensure that we reap the benefits of our achievements and that our progress is never undone.●

TRIBUTE TO SISTER JANE FISCHER, 1992-93 CLOSE UP FOUNDATION LINDA MYERS CHOZEN AWARD RECIPIENT

● Mr. DURENBERGER. Mr. President, I am happy to have this opportunity to pay tribute to Sister Jane Fischer who was honored this week, in Washington, as a leader in civic education by the Close Up Foundation. She was awarded the Close Up Foundation Linda Myers Chozen Award on February 1, 1993.

The Close Up Foundation-Linda Myers Chozen Award for Teaching Excellence in Civic Education was established in 1991 through an endowment funded by the late Linda Myers Chozen. Award recipients are selected based upon teaching excellence and leadership in the Close Up Washington Program, local or State programs, and related classroom and civic activities.

Sister Jane Fisher, a teacher at Cretin-Durham Hall High School in St. Paul, MN, helped found the Minnesota Close Up Program more than 20 years ago. She has a remarkable record of providing citizenship education for our Nation's youth, and is one of only five teachers nationwide to receive this annual award.

After enjoying many years of friendship and cooperation with her, I would like to thank Sister Jane Fischer on behalf of myself, the people of Minnesota and especially her students. Through her teaching, as well as by example, Sister Jane Fischer has shown those who have had the good fortune to be a part of her life, how to be active citizens in our democracy.●

TRIBUTE TO PROJECT PPEP FOR 25 YEARS OF DEDICATED SERVICE

● Mr. McCAIN. Mr. President, every day we are constantly reminded of the human injustices, poverty, and social division that plague our world. However, today I am privileged and honored to share with my colleagues some brief words about an organization that has worked tirelessly to improve the lives of the rural poor in the Southwest. I would like to extend my sincere gratitude and commendations to the Portable Practical Educational Preparation, Inc. [PPEP] of Tucson, AZ, as they celebrate their 25th year of service.

Twenty-five years ago, a man named John Arnold converted his 1957 Chevrolet schoolbus into a traveling classroom for rural Arizonans. He compassionately spent his time teaching migrant workers English as a second language and the value of learning vocational and technical skills. This was only the beginning of what is now known as PPEP.

Twenty-five years later, PPEP, a multifunded and nonprofit corporation continues to provide a multitude of social services for our disadvantaged population. Some examples of these vital services include: Affordable housing for migrant workers, necessary sewers and streets enhancement, day care sites, senior nutrition, and recreation centers. The list of good works accomplished by PPEP on a daily basis is lengthy and impressive. Most importantly, PPEP has made it possible for rural families to experience the dignity they so undoubtedly deserve.

The success stories of these migrant families are a testimony to the American dream. Organizations like PPEP prove that many of our underprivileged citizens are receptive to learning and eager to better their own lives, if we are willing to listen and lend a helping hand.

It is extremely important that we continue to support such organizations as PPEP. The committed staff and volunteers of PPEP understand that investment and involvement in grassroots level programs better our communities and our country as a whole.

Ultimately much of our future depends on programs such as PPEP. The staff at PPEP has encouraged many disadvantaged citizens to utilize the advantages of technical skills and computer literacy. With these skills, people are capable of shifting from welfare to productive lives in the job market.

We cannot afford to do without organizations and people such as PPEP. It gives me great pleasure to extend my best wishes to John Arnold and his colleagues at PPEP upon their 25th anniversary of service. I hope they have many more years ahead.●

THE REPORT OF THE SELECT COMMITTEE ON POW/MIA's

● Mr. BROWN. Mr. President, the recent issuance of the final report of the Select Committee on POW/MIA's marks the end point of 15 months of the most extensive investigation of the POW/MIA issue yet completed by the Congress. Numbering more than 1,000 pages, the final report covers in detail the wide range of the committee investigation.

As important as the final report, though, are the myriad of other initiatives resulting from the committee's work. For instance, our investigation resulted in the most rapid and extensive declassification of public files and documents in American history. This effort is nearing completion. The committee conducted the most rigorous examination yet completed of U.S. intelligence operations concerning the possibility that Americans survived after the war. We reviewed more than 3,000 National Security Agency intelligence reports and 90 boxes of wartime NSA files and conducted the first ever review of pilot distress symbols and their relationship to photographic interpretation.

The committee's efforts were significant in moving the Vietnamese Government toward increased openness and assistance in accounting for Americans missing in action in Southeast Asia. During a committee trip to Vietnam, the Vietnamese Government announced its intention to provide increased access to American investigators. The result has been unprecedented American access to Vietnamese prisons, military bases, government buildings, documents, photographs, archives, and materials—all of which may assist our own Government in answering the many questions still surrounding the fate of our missing servicemen.

The committee has worked with the executive branch to establish a process of live-sighting response, investigation, and evaluation that is the most extensive and professional ever conducted. Even as the committee's efforts draw to a close, the live-sighting investigations are moving ahead rapidly.

Furthermore, committee efforts in coordination with the executive branch led to the beginning of a significant joint process with Russia to uncover information the Russian Government might have concerning American POW/MIA's. Never before has the Russian Government opened some of its most secret files to United States historians and archivists. Although Russian Army intelligence, the GRU, has not open its files to the Russian-American team, the Russian KGB's willingness to open its own files is a significant first step.

The chairman, Senator JOHN KERRY, deserves special recognition for this tireless efforts to ensure the committee's investigation was brought to a

successful conclusion. JOHN KERRY provided an effective environment for tough discussions of heart-rending issues. He acted as both a peacemaker, an arbiter, and an organizer of a pack of headstrong legislators.

The ranking member, Senator BOB SMITH, should be recognized for his efforts to ensure that the committee's staff used every imaginable investigative method in reviewing available data. It is in large part due to these efforts that the committee was able to reach a unanimous conclusion on the state of the evidence concerning Americans unaccounted for Vietnam.

VIETNAM: THE HEROES

During the course of our investigation, the select committee was struck by the heroics of the Americans held in captivity in Vietnam.

The commitment and sacrifice of these men under the most extreme conditions was truly remarkable. In spite of discord at home, propaganda, and torture, the conduct of most of the POW's stands as an inspiration and example to all who wear our country's uniform.

Following are a few examples of those who were captured and detained in North Vietnam, Loas, and Cambodia.

Vice Adm. James B. Stockdale, U.S. Navy: Vice Admiral—then Commander.—Stockdale's A4E aircraft was shot down over North Vietnam on September 9, 1965. Injured during the ejection sequence and wounded by his captors, Stockdale was the senior American imprisoned in Vietnam. His organization of the prisoners into a cohesive military chain of command earned him numerous beatings and time in solitary confinement. He was recognized by his captors as the leader in the POW's resistance to interrogation and in their refusal to participate in propaganda exploitation.

Admiral Stockdale was singled out for interrogation and torture after being caught in a covert communications attempt. Sensing the start of another purge, and aware that his earlier efforts at self-disfiguration, beating his head against a wall so that he could not be photographed by the North Vietnamese to dissuade his captors from exploiting him for propaganda purposes, had resulted in cruel and agonizing punishment, Stockdale nonetheless resolved to make himself a symbol of resistance regardless of personal sacrifice.

He deliberately inflicted a near-mortal wound to his person in order to convince his captors of his willingness to give up his life rather than capitulate. He was subsequently discovered and revived by the North Vietnamese who, convinced of his indomitable spirit, abated in their employment of excessive harassment and torture toward all of the American prisoners. His courageous resistance, his efforts to account for the prisoners that were his responsibility and his inspirational example for all American servicemen in North Vietnam's prison system led to his receipt of the Nation's highest award following his release—the Congressional Medal of Honor.

M. Sgt. Terrill J. Salley (U.S. Army): In March 1971, Vietcong and Hanoi radio broadcasts recounted the capture of two Americans. Circumstances correlate one of these Americans to be M. Sgt. Salley. Former POW's confirmed that Salley died in captivity. In addition, his name was on the Died in Captivity List of the Provisional Revolutionary Government of Vietnam.

Col. Fred Vann Cherry (U.S. Air Force): Then-Major Cherry's F-105D aircraft was shot down while striking military targets in northern Vietnam. He was observed on the ground by his wingman, and beeper contact was established and maintained throughout the remaining daylight hours, but could not be reestablished. Colonel Cherry's subsequent captivity was marked by senseless, violent beating by his North Vietnamese captors. Cherry refused to compromise his beliefs and training and stubbornly resisted his captors until his eventual release.

M. Sgt. Isaac Camacho (U.S. Army): Master sergeant (then sergeant first class)—Camacho, a special forces noncommissioned officer, was captured early in the conflict in South Vietnam. On November 24, 1963, the unit he was advising was overrun. He and three other U.S. servicemen were captured. Master Sergeant Camacho's assistance to his fellow prisoners and his resistance to his captors remains a legend in the U.S. Army. Camacho eventually escaped and returned to U.S. control. For his gallantry, this brave sergeant was awarded the Congressional Medal of Honor.

Pfc. Donald J. Sparks (U.S. Army): Private First Class Sparks was captured on June 17, 1969, when his patrol was ambushed in South Vietnam. Sparks and another soldier were wounded, and as members of the patrol withdrew, they observed North Vietnamese personnel stripping Sparks of his clothing and weapon. The following day a U.S. patrol returned to the ambush site and recovered the body of the other American, but there was no sign of Sparks.

Almost a year later, two letters written by Sparks in April 1970 were found on a Vietcong soldier. In one of the letters, which was determined to be authentic, the young soldier mentioned that he had received a foot wound, but that it had healed. he added that he had not seen another American during his 10 months in captivity.

Three Americans released during Operation Homecoming reported that in the spring of 1970, while they were enroute to a new camp in the same province where Sparks was lost, a Vietnamese guard mentioned that a POW named "Don" was moving slowly because of a foot wound, but would soon join them. The POW the guard mentioned never arrived. Sparks is still carried as missing in action.

Capt. John S. McCain III (U.S. Navy): Captain—(then Lieutenant commander)—McCain's A4E aircraft was shot down over Hanoi in October 1967. Captain McCain ejected from an inverted aircraft and broke both arms and a leg during the ejection. North Vietnamese soldiers quickly pulled him from a lake near Hanoi and beat him severely. Near death, McCain recovered slowly.

McCain's father, Admiral McCain, was then commander of the Pacific Fleet. Lieutenant Commander McCain was singled out for repeated torture and brutal treatment. Numerous beatings, bones rebroken by his captors time and again, and months of solitary confinement further slowed recovery. The Vietnamese offered him early repatriation several times in an attempt to dishearten the other prisoners, but McCain refused to be repatriated ahead of the other POW's. His spirit could not be broken. He continued to resist his captors and to inspire other prisoners by his patriotic determination.

During the long internment, McCain served the other prisoners both as chaplain and as an educator. As chaplain, he conducted religious services, provided spiritual guidance, and instilled constructive rehabilitative thinking for the benefit of his fellow prisoners. In addition, despite constant harassment and the routine harsh treatment, McCain devoted long hours to preparing educational lessons that would improve the morale and well-being of the other prisoners.

Col. Charles Shelton (U.S. Air Force): Colonel Shelton was shot down over Laos in April 1965 in a photo reconnaissance mission over northeast Laos. Nearby aircraft had been diverted to assist in search operations, and the pilot of an F-105 aircraft observed Colonel Shelton on the southern slope of a small ridge, about 30 to 40 yards from his empty parachute. Shelton waved his hands and indicated he was OK, but before rescue helicopters reached him, cloud cover completely obscured the ground, making rescue impossible. Weather conditions continued to prevent helicopter recovery for the next few days, and when friendly ground parties landed in the area and conversed with indigenous Laotians, they evaded questions concerning the fate of the downed pilot.

A friendly search team of Meo team tribesmen sent in one week after the crash confirmed Shelton was taken captive by enemy forces but could provide no further information on his fate. Intelligence received later cannot be correlated with complete certainty to Colonel Shelton, but it appears to indi-

cate that he continued to resist his Pathet Lao captors, even making attempts to escape. However, no concrete information has been provided by the Government of North Vietnam concerning Colonel Shelton. Consequently, he is still carried on the rolls of the missing in the symbolic status of missing/captured—the only U.S. serviceman in that status.

WO1 Daniel F. Maslowski's UH 1H helicopter was shot down in eastern Cambodia on May 2, 1970. Lieutenant Colonel Maslowski subsequently rallied his crew and attempted to resist North Vietnamese forces until they were overrun. During his follow-on captivity in Cambodia, Lieutenant Colonel Maslowski continued to assist and care for injured crewmembers. His efforts to resist his captors continued until their release. For his actions, Maslowski was awarded the Bronze Star and the Distinguished Flying Cross.

Col. William Thomas Mayhall (U.S. Air Force): Colonel—then first lieutenant—Mayhall's B–52 was struck by multiple surface-to-air missiles during a daylight strike on military targets in the Red River Delta of North Vietnam on December 21, 1972. When his ejection seat mechanism failed, Lieutenant Mayhall bailed out through a hole in the aircraft and, upon landing, was captured by armed civilians and militia.

Throughout his captivity in Hanoi, Mayhall assisted more senior POW's in maintaining morale and cohesiveness among his fellow prisoners. His strict adherence to the rules of the Geneva Convention and his aircrew training were a constant example to the other POW's. Upon return, he received the Distinguished Flying Cross and the POW medal.

Capt. Lance P. Sijan (U.S. Air Force): Captain Sijan's F–4C was shot down over Laos in November 1967. During his ejection he was seriously injured, breaking both legs. In this condition, he successfully evaded capture for several weeks by dragging himself through the jungle with his hands.

After his capture, Sijan, even though in weakened condition, overpowered his guard and crawled into the jungle, only to be recaptured a few hours later. During subsequent questioning, the Vietnamese interrogator pulled and twisted his broken limbs in attempts to break Captain Sijan's spirit and force him to divulge classified information.

Despite intense pain frequently causing unconsciousness, Sijan never gave information other than that required by the Geneva Convention. Thus weakened, Sijan died in captivity. He was posthumously awarded the Congressional Medal of Honor for his heroism.

Col. Robert R. Craner (U.S. Air Force): Colonel—then major—Craner's forward air control F–100F was shot down near Vinh on December 20, 1967. He was initially held with Capt. Lance Sijan, whom he tried in vain to keep alive. Craner's refusal to be used in Hanoi's propaganda campaign, and his efforts to improve the morale of his fellow American prisoners and their covert communications efforts, inspired continued resistance by the POW's. His efforts earned him frequent interrogations, torture, and long periods in solitary confinement. Upon his return, Colonel Craner was awarded two Silver Stars for his actions while a POW.

Col. Floyd James Thompson (U.S. Army): Colonel—then captain—Thompson was an aerial observer aboard an O1F observation aircraft when it was shot down on March 26, 1964, near the Laotian border in South Vietnam. Captain Thompson was then held in several primitive detention facilities over the next 9 years. Thompson was held longer than any U.S. prisoner; his steadfast courage under extreme conditions was a model for all U.S. servicemen to emulate.

Comdr. Richard Allen Stratton (U.S. Navy): Then—lieutenant commander—Richard Stratton was shot down over North Vietnam on January 5, 1967, when his A–4 aircraft came under intense antiaircraft and surface to air missile attack. Commander Stratton's fierce resistance to his North Vietnamese captors earned him many ferocious beatings and hours of solitary confinement. He resisted all efforts by his captors to use him in causes detrimental to the United States. Stratton maintained good order and discipline among his fellow prisoners. Despite constant harassment and the routine harsh treatment, he devoted long hours toward improving the morale of other prisoners as a member of the entertainment group. His spirit and audacity inspired the rest of the prisoners to continue resistance to their North Vietnamese captors.

Col. George Day (U.S. Air Force): Col. George "Bud" Day was shot down over North Vietnam in August 1967. His right arm was broken in three places and his knee badly sprained. He was captured by hostile forces and immediately taken to a prison camp where he was interrogated and severely tortured. After causing the guards to relax their vigilance, Colonel Day escaped into the jungle and began the trek toward South Vietnam. He was the only POW to escape from prison in the north.

Despite injuries inflicted by fragments of a bomb or rocket, he continued southward surviving only on a few berries and uncooked frogs. He successfully evaded enemy patrols and reached the Ben Hai River, where he encountered U.S. artillery barrages. With the aid of a bamboo log float, Colonel Day swam across the river and entered the demilitarized zone. Due to delirium, he lost his sense of direction and wandered aimlessly for several days. After several unsuccessful attempts to signal U.S. aircraft, he was ambushed and recaptured by the Vietcong, sustaining gunshot wounds to the left hand and thigh.

He was returned to the "zoo," the prison from which he had escaped and later was moved to Hanoi after giving his captors false information in response to their questions. Physically, Day was totally debilitated and unable to perform even the simplest task for himself. Despite his many injuries, he continued to resist. Furthermore, 37 months of his 5½ year imprisonment were spent in solitary confinement. Upon his release in 1973, Colonel Day was awarded the Congressional Medal of Honor for his heroic efforts.

WO 1 Solomon Goodwin (U.S. Marine Corps): Warrant Officer Goodwin's residence in Hue City came under fire at the beginning of the Tet Offensive. Realizing that an American agricultural advisor was occupying the building adjacent to his own, Goodwin exposed himself to the enemy fire to bring the man to the relative safety of his own position.

With a total of 6 defenders, Goodwin's position repeatedly rebuffed enemy attack, killing at least 20 enemy soldiers and capturing one Vietcong. While retreating from a final, all-out assault on their position, the men were captured by the enemy on February 5, 1968.

Warrant Officer 1 Goodwin was detained in the hills outside Hue until July 1968 when he and another American POW, who returned to the United States during Operation Homecoming, began their journey to North Vietnam. Warrant Officer 1 Goodwin's health deteriorated rapidly and he died during the march northward. He was posthumously awarded the Silver Star medal.

Rear Adm. Jeremiah Denton (U.S. Navy): Rear Admiral Denton's A6 aircraft was shot down near Thanh Hoa, North Vietnam in July 1965. North Vietnamese soldiers quickly captured him as his parachute landed in the Ma River. He was soon transported to a prison in Hanoi. There, Denton was tortured, put into solitary confinement and repeatedly beaten. It was Denton who provided the United States the first evidence of torture by the Vietnamese of the American prisoners when he blinked the word torture in Morse code in a televised interview. This brave stunt led his captors to increase the frequency and harshness of Denton's interrogations and beatings during the next 7 years of imprisonment.

At one point, Denton perceived a high-level shift in enemy tactics in dealing with the prisoners which imposed new limitations on the North Vietnamese captors. Denton then directed increased resistance by the American prisoners which resulted in a

significant reduction in enemy demands to use prisoners for propaganda purposes. In May 1970, Denton personally led and directed a period of fasting by the prisoners to demand better treatment and protest solitary confinement.

In September 1972, Denton refused to appear at a public presentation of the POW's planned by their North Vietnamese captors. Annoyed by his refusal, the North Vietnamese ordered guards to torment him to complete physical exhaustion. After being overpowered by his guards, Denton was transported to the museum where he displayed such disinterest and disdain toward the North Vietnamese that he proved to be an embarrassment in his captors' attempts to use the appearance for propaganda purposes. Consequently, the North Vietnamese never again attempted a similar display of the prisoners. Rear Admiral Denton's stubborn resistance was an inspiration to his fellow prisoners.

DEFENSE INTELLIGENCE AGENCY

During the course of our investigation, we received testimony from many POW/MIA family members that the Defense Intelligence Agency has been less than helpful in its responses to their requests for information and assistance.

After working closely with DIA in this investigation for more than a year, it is evident that the families' concerns are well-founded. Some of the DIA's responses to questions put to it by the committee were evasive and nonresponsive.

From the beginning, DIA's assessment that hundreds of sworn live-sight reports did not constitute evidence was disconcerting. Certainly our investigation determined the reports may not constitute proof, but to dismiss them as evidence implied an unwillingness to conduct an objective inquiry.

Obtaining straight answers to straightforward questions was often difficult. In some cases, DIA's broad assertions that no evidence existed on one point or another were cavalier and misled the committee. Here are two examples:

First. On August 4, 1992, when asked about the possibility of an underground prison beneath Ho Chi Minh's Mausoleum in Hanoi, the DIA testified to the committee that they could not "find any evidence that there is even a basement in any building in the country * * *."

In fact, DIA's testimony was contradicted by a September 1992 Defense Intelligence Agency message that stated:

DNA and DIA analysts have identified items associated with the construction of Ho Chi Minh's tomb that indicate a below-grade infrastructure that is far more elaborate than what one would expect from simply a mausoleum. [DIA/PW message, dated 101522Z September 1992, Subject: Collection Support Requirement, paragraphs A, B, and C].

Although the September message did not prove the existence of any sort of underground facility, it certainly brought to the committee's attention once again DIA's propensity for categorical denials not supported by the evidence, or even by thorough analysis.

Second. DIA officials testified that a November 25, 1979, radio intercept concerning possible United States prisoners in Viengxay, Laos, was followed up completely. They further stated the intercept contained no information regarding American prisoners. However, in direct contradiction, the committee uncovered the fact that the actual National Security Agency memorandum discussing NSA's attempts to follow up on the intercept stated that none of NSA's followup attempts had been successful—not that the intercept contained no information of American prisoners (NSA Central Security Service Memorandum, Nov. 18, 1992).

THE PARIS PEACE ACCORDS

Mr. President, no single element of the investigation generated more controversy than did the committee's attempt to characterize what it learned concerning the Paris peace accords. In the view of this committee member, some on the committee attempted to artificially limit their focus on the accords to such an extent that the picture the report communicates of events occurring in 1973 and 1974 is skewed. Consequently, I would like to take a moment to clarify the record on these important events.

At this point, I ask that a recent editorial from the Washington Post be included in the RECORD.

The article follows:

[From the Washington Post, Jan. 19, 1993]

PUTTING THE MIA ISSUE BEHIND

Were any of the American military men classified as missing in the Indochina war alive then and are any alive now? Neither part of this painful question can be answered with conclusive proof. The Senate MIA Committee, however, has done what duty demanded and circumstance permitted to wrap up an inquiry that has roiled the national conscience and national politics for 20 years. Its conclusion that some Americans may have been left behind but that there is "no compelling evidence" any are now alive deserves a sober hearing. Some anguished families may be unable to accept it. Some conspiracy theorists may refuse to. It is notable, however, that on the committee the unanimous support for this conclusion reached from Chairman John Kerry to Jesse Helms.

Much of the public discussion of MIAs has been an intensely partisan inquiry into whether the Nixon administration or the Defense Department abandoned American fighting men and then covered up the abandonment. The committee found evidence of sloppiness, secrecy and fatigue on the bureaucratic level and of evasion on the political level, but not of a coverup or conspiracy. Even as they soft-pedaled the MIA issue in home debate, President Nixon and his secretary of state, Henry Kissinger, pressed the North Vietnamese hard. One reason a full MIA accounting eluded them was that Congress, to end the war on its own terms, had removed from the executive's hand a plausible threat to resume military action. This is the point that Mr. Kissinger, alerted by leak of a staff draft, sought, without full success, to have made in the final report.

The American debate should not impede understanding of where the principal onus for the failure to obtain a full accounting lies: on Vietnam. Hanoi saw in American concern for MIAs a lever with which to bargain successively for: (1) reparations, which the United States flatly refused to pay: (2) economic aid, a tenuous possibility that disappeared when Hanoi broke the peace accords, and (3) more recently, normalization of relations. Its bargaining involved constant lies so that each new slice of disclosure inevitably became a confession of past deception.

No one can know what secrets Vietnam may still be hiding. Anyway, 20 years is a long time. The committee has made a useful contribution to American comity.

THE ACCORDS

Mr. President, as a casual reader reviews the body of our report, he would get the distinct impression that during the development of the accords in late 1972 and early 1973, somehow, someway, United States negotiators developed a defective document that let the Vietnamese off the hook and did not require a complete and full accounting of United States prisoners and those missing in action. That impression left by the report is simply inaccurate.

What is not included in the report is the simple fact that every witness heard by the committee during the course of its investigation of the accords stated that the "Accords were the best achievable under the circumstances." We took sworn testimony from the full range of negotiators, experts, and other government officials involved in the negotiation of the accords. Not one of the many who appeared before our committee contradicted that assertion. The Chairman, Senator KERRY, perhaps summed it up best during Dr. Kissinger's testimony when he stated:

I think you got the best agreement you could. And I said that at the very beginning. And I am proud to acknowledge there were, as people have written many times, extraordinary moments of your deftness, brilliance, capacity to negotiate with very difficult levers. And I want that on the record * * * you have made your mark in history on that [the Accords].

The accords were signed after 4 grueling years of negotiations with the North Vietnamese. They provided for the withdrawal of all United States forces and the release of all United States POW's held throughout Indochina within 60 days.

Internationally and at home the agreement was hailed as a success. U.S. negotiators had successfully achieved peace with honor for the United States. Critics became advocates. Kissinger was awarded a Nobel Peace Prize for his efforts. At the time, the New York Times, no fan of the administration, hailed the accords as "a diplomatic triumph" which had been achieved "under merciless crossfire" and "complex pressures." The Washington Post ap-

plauded the administration for not trying to iron out every nuance:

Ambiguities necessarily—providentially—remain. For Americans, they are not defects: they are assurances that the unresolved questions at issue will be left for resolution to parties other than the United States. The alternative would be for the United States to fight on.

The POW/MIA provisions of the accords were the most extensive of any postwar settlement. In 1976, the House Select Committee on Missing Persons in Southeast Asia thoroughly reviewed these provisions and concluded that they were "not only adequate, but excellent. * * * These provisions constitute an achievement of which the American negotiators and the American people can be proud."

Although some during our committee's investigation have tried to argue the administration should have achieved more definite assurances or more ironclad guarantees, according to testimony received by the committee, there was no support in 1973 for more definite assurances. In fact, throughout 1972 the administration was castigated in congressional hearings and in the media for continuing to negotiate rather than withdraw unilaterally.

Furthermore, it is not apparent that the North Vietnamese would have acted differently if the language of the accords been more specific, if the Laotian provisions had been part of the text of the agreement itself rather than a side understanding, or if lists of POW's had been exchanged prior to the signing of the agreements. The plain fact is that Hanoi violated all of the agreements, whether formal or informal, written or oral.

IMPLEMENTATION OF THE PARIS PEACE ACCORDS

Some have contended that once the Paris peace accords were signed, the Nixon administration made few efforts to ensure a complete accounting for those missing in action. Furthermore, some claim that once it was evident the North Vietnamese were not abiding by the accords, the administration did not bring its concerns that Americans might still be held in Indochina to the attention of the American public.

Once the accords were signed, what actions could the administration have taken to ensure the North Vietnamese complied with the requirement to provide a full accounting for American servicemen missing in action?

First, Congress and the executive branch could have spoken out. The record shows that the executive branch repeatedly and publicly expressed its concerns about Hanoi's refusal to help account for the MIA's, especially those known to have been alive and in captivity. Dr. Kissinger included the following as examples of administration efforts in a letter he provided to the Committee:

On February 8, 1973, Secretary of State Rogers told the House Foreign Affairs Committee "As you know, we do not regard the Lao list as complete." He expressed concern about some 1,300 American MIA's not on lists and pledged efforts to obtain the fullest possible accounting.

On February 21, 1973, Secretary Rogers testified to the Senate Foreign Relations Committee stressing that the United States was pushing for a full accounting of MIA's and expressing concern those "missing or captured" in Laos.

On February 25, 1973, Dr. Kissinger told Barbara Walters that much of the time in Hanoi was spent on MIA's.

On March 2, 1973, during peace conference meetings in Paris, Secretary Rogers noted United States unhappiness with MIA accounting and warned against any delay of POW releases.

On March 29, 1973, President Nixon addressed the Nation and stated as part of the same address in which he made the oft-quoted statement that "* * * all our POW's are home * * *" that the United States was not satisfied with the North Vietnamese accounting for those missing in action.

On April 12, 1973, during his much cited press conference, Dr. Roger Shields stated that the United States had "no indication" that Americans remained alive in Indochina. However, he also repeatedly stated "we have not yet received all information concerning our men in Laos and Cambodia."

On April 20, 1973, the United States issued a public statement listing all violations including the DRV failure to provide information on MIA's or those who had died there.

On May 3, 1973, the President's foreign policy report notes that the United States focus is on MIA's.

On May 31, 1973, the Special Assistant to the Secretary of State for POW/MIA's, Mr. Frank Sieverts, testified to the Senate Foreign Relations Committee noting United States unhappiness with the North Vietnamese accounting, and stating that the United States would continue pressing for a full accounting.

On June 13, 1973, in a press conference following the issuance of the joint U.S./DRV communique on the Paris peace accords, Dr. Kissinger stated that "We are concerned about inadequate accounting for MIA's."

On July 29, 1973, the United States issued a public protest to the Government of North Vietnam concerning its failure to comply with the article in the accords on accounting for those missing in action.

In September 1973, during his confirmation hearing as Secretary of State, Dr. Kissinger testified to the Senate Foreign Relations Committee that he was "extremely dissatisfied" with Hanoi's refusal to provide additional information about the MIA's, especially those men known to have been alive in captivity.

On January 25, 1974, President Nixon proclaimed a "National MIA Awareness Day" and called upon all Americans to express their commitment to seek a full accounting for the missing.

However, even in light of these many actions some have complained that although the administration at the time was raising the issue of the lack of Vietnamese cooperation in providing a full accounting, the administration did not point out to the public that this group of the missing included men who we had reason to suspect might still be held as prisoners. That complaint is flatly controverted by the facts. Beginning in May 1973, both the Senate Foreign Relations Committee and the House Foreign Affairs Committee held a series of hearings focusing on the problem of obtaining an accounting for American servicemen still missing in action in Indochina after Operation Homecoming. A review of these hearings and of the CONGRESSIONAL RECORD from 1973 and 1974 makes it clear that both Congress and the executive branch were well aware that the large grouping of men termed "missing" in action included a number who were last known to have been in captivity.

The report compiled by the Defense Department's Comptroller on March 31, 1973, listing 81 servicemen as "current captured" was printed in the CONGRESSIONAL RECORD on June 4, 1973.

A similar report, compiled by Dr. Roger Shields, as printed in the CONGRESSIONAL RECORD on May 31, 1973, at the request of Senator DOLE.

In a memo sent to the select committee, Dr. Kissinger noted that "Representatives of the National League of Families also provided Congress on numerous occasions with specific information about individual servicemen, such as Lieutenant Commander Dodge and Donald Sparks, who were known to be alive in captivity and who continued to be listed as prisoners of war. National League representatives repeatedly stated that they believed some of these men were alive. For example, on May 25, 1973, Joseph McCain, brother of now-Senator JOHN MCCAIN showed slides of men known to have been captured alive, including Lieutenant Commander Dodge, to a congressional fact-finding delegation in New York City. McCain concluded: 'I think all of us here are saying unless there is something done, and hopefully by Congress, those men are going to remain as slides in that machine, and in those photographs, and they are just going to remain question marks.'" [House Foreign Affairs Committee hearings, 1973, p. 134].

On June 4, 1973, demonstrating congressional awareness that the term "missing in action" also included those last known to have been prisoners, Congressman MONTGOMERY stated, "* * * in Laos alone, some 311 men were shot down, but we have received

only 7 prisoners from the Communists in Laos. The law of averages tells us many more of these men should still be alive."

In yet another demonstration that Congress was fully aware that the list of MIA's contained those who were last known to be prisoners and might still be held as such, Congressman John Ashbrook stated on October 4, 1973 that—

Eighty-three Americans, have been identified in either pictures or by those POW's who returned home as having been held prisoner by the North Vietnamese. The North Vietnamese have released no information on these men. While the likelihood of these 83 still being alive is slight, there is no military reason for the North Vietnamese being as cruel and inhuman as they are being in this matter.

On December 5, 1973, Dr. Shields testified to the House Foreign Affairs Committee that—

The most we can say today is that these men were alive, some definitely captured, and the other side knows what happened to them. If the men are not alive today, we certainly should receive information about what happened. If they are dead, we should receive the remains.

During the same December 5, 1973 hearing, when asked how many were in the above status, Shields stated "Today, I believe we carry 57 men as prisoners of war. * * *"

In an April 10, 1974, report on "Missing in Action in Southeast Asia," issued after a year of hearings, the Senate Foreign Relations Committee stated that "some 56 servicemen who were previously acknowledged as captured are still officially listed on Defense Department rolls as POW." [Report 93-982, 1974].

Second, after speaking out—and the record is clear on that point, it seems that the administration should have demanded a full accounting at the negotiating table. Did they? The record uncovered by the select committee is clear. In February 1973, Dr. Kissinger raised specific cases with Le Duc Tho of United States prisoners not on Vietnamese lists. In biweekly meetings with the North Vietnamese negotiators that lasted until June 1974 when the DRV began to boycott the meetings, the United States team made specific requests for the information on particular cases of Americans missing or last known to be in captivity.

Deputy Assistant Secretary of State Frank Sieverts testified in December 1973 that the United States side had "followed up as intensively as we can every one of those cases. We have raised them with the other side individually, in small groups, and in larger groups." He stated that the United States team had provided the North Vietnamese voluminous dossiers on every missing individual with evidence indicating that some of these men were alive and in captivity, but that the North Vietnamese simply "put on a blank face" and refused to provide any information.

Dr. Kissinger testified that he also pressed Le Duc Tho for more information about the MIA's in meetings in May-June and December of 1973. On June 13, Hanoi agreed to a joint communique that "any captured personnel covered by article 8(a) of the agreement who have not yet been returned shall be returned without delay" and to help "get information about these military personnel and foreign civilians of the parties missing in action."

The United States made private protests, public protests, diplomatic protests and military threats. The North Vietnamese were well aware of our concerns that they might still hold American prisoners. As the Montgomery report stated, the primary reason the American people did not gain a full accounting for those missing in action was not due to State Department inaction, but rather, it was due to Hanoi's deliberate withholding of information on United States prisoners of war.

Third, the question is raised as to whether the United States could have obtained the release of more POW's by paying ransom. However, it is clear that our policy from the beginning was not to link the release of POW's to any form of reparations. It is important to note too the committee found that after the return of our POW's during Operation Homecoming, North Vietnam did not offer to exchange prisoners for ransom, and Congress acted to deny economic assistance payments talked about during the negotiations.

LEVERAGE

Last, the United States could have threatened to bomb North Vietnam, or to take other military actions, if the DRV did not come forward with a full accounting. During testimony to the committee, Dr. Kissinger noted that he recommended just such action. Public opinion clearly was against it. Editorials in the New York Times, the Philadelphia Inquirer, the L.A. Times, Newsweek, the Washington Post, the Minneapolis Star, the Baltimore Sun, the Des Moines Register, the St. Louis Post-Dispatch, the Atlanta Journal all spoke out in strong opposition to the threat the President held out that there could be potential bombing if North Vietnam did not comply.

In fact, the Congress prohibited such action. As noted in the report, during Senate consideration of the Eagleton-Brooke-McClellan amendment to the defense appropriations bill, Senators DOLE and HELMS offered an amendment that would authorize the President to use force:

* * * if the President finds and forthwith so reports to the Congress that the Government of North Vietnam is not making an accounting, to the best of its ability, of all missing in action personnel of the United States in Southeast Asia, or is otherwise not complying with the provisions of article 8 of the agreement signed in Paris on January 27, 1973, and article 10 of the protocol. * * *

By a 2-to-1 margin, the Dole-Helms amendment was defeated by the Senate and the Eagleton amendment sustained, cutting off all funds that might have provided the President leverage and sending a clear signal to the North Vietnamese that America would not retaliate for any reason whatsoever. We could not. In other words, we had a clear vote in Congress on the question of demanding an accounting from the Vietnamese, and if they did not comply with that, having the ability to bomb. Twenty-five Members of the Senate voted to demand a full accounting with the threat of bombing. Fifty-six members of the Senate, including 12 that are still Members, voted to deny funds for bombing, even if the North Vietnamese did not account for our POW's.

During the debate on the Dole amendment, the Senate majority leader, opposed to the Dole-Helms effort, stated:

Mr. President, the only way to deal with this situation is to face up to our responsibility. The only way to do it effectively is to cut the purse strings. And that is what the Eagleton amendment does, because it locks off funds from any and all directions and any and all acts so that if the Congress speaks on this basis, it will means that we will at long last—13 years too late—get out of Southeast Asia all the way. And as far as the MIA's are concerned, this Government is making every effort, and will continue to do so, to attempt to identify them. But if we want more MIA's we should vote for the pending amendment and we will get them, just as we are getting them now in Cambodia.

If we want quicker action as far as the MIA's are concerned, we should keep the Eagleton amendment intact.

Seeing imminent defeat of his attempt to give the executive branch much-needed leverage to ensure all those missing in action were accounted for, Senator DOLE remarked prophetically:

I would hope those who read the record and those who sit down next year or 20 years fron now to read the record, in the event the North Vietnamese do not carry out the agreement, will know that there were those of us in the Senate who stood and let our views be known.

On September 18, 1973, Congressman Huber stated on the floor of the House of Representatives:

Almost anything would be better than what the Congress is now doing about the issue [POW/MIA's], which is almost nothing at the moment.

On December 17, 1973, Congressman Sikes noted that:

The Congress has stripped the President of any power he may have had to deal with problems in Indochina by taking from him authority to use the military forces to America's interests.

One Member of Congress attributed congressional inaction on POW/MIA's to Congress' complete absorption with the unfolding political situation. On

June 4, 1973, Congressman MONTGOMERY pleaded with the House of Representatives:

Mr. Speaker, in my opinion, it is time to push the Watergate off the front pages of the American newspapers and start focusing our attention on the plight of these 1,300 American servicemen. I also believe it is time for Members of Congress to stop trying to make political points out of Watergate and turn their attention to the humane task of finding information on our fellow Americans missing in Southeast Asia. Our time will be much better spent working on behalf of these men rather than becoming self-appointed prosecutors in a case that properly belongs within the jurisdiction of the Department of Justice.

Mr. President, Congress removed any possibility of leverage the United States might have held over the North Vietnamese. They, like the President at the time, were absorbed by the unfolding Watergate scandal. Despite repeated attempts to bring the North Vietnamese failure to provide a full accounting for those missing in action and those last known to be held as prisoners to the attention of the Congress, the Congress blocked all efforts to increase the administration's leverage.

These are the three main issues surrounding the signing and implementation of the Paris peace accords. I would ask that a memo prepared by Dr. Kissinger in response to his testimony before the committee as well as the full text of President Nixon's answers to committee questions be included at the end of my statement.

(See exhibit 1.)

EXHIBIT 1

INACCURATE POW/MIA COMMITTEE ASSERTIONS, NOVEMBER 4, 1992

ADEQUACY OF THE POW/MIA PROVISIONS

Allegation No. 1: Contrary to assertions by Nixon and Kissinger, the POW/MIA provisions were not "ironclad."

Response: The POW/MIA provisions of the Paris Peace Accords were the most extensive of any post-war settlement in history and were the best achievable by the U.S. side under the circumstances. The House Select Committee on Missing Persons in Southeast Asia (the "Montgomery Committee") concluded in 1976 that they were "not only adequate, but excellent. . . . These provisions constitute an achievement of which the American negotiators and the American people could be proud. "Hanoi has never questioned its obligations to release all U.S. POWs and to account for U.S. MIAs throughout Indochina. If, in hindsight, the provisions do not appear to be perfect, the reason is that in any negotiation, perfection is never achievable. Those who today assert that better provisions should have been achieved should be obliged to specify precisely which provisions they would have changed in what way and how they would have successfully negotiated such provisions given the political, diplomatic, and military environment in early 1973.

ACCOUNTING FOR MIAS IN LAOS

Allegation No. 2: The side understanding on Laos and Cambodia did not cover MIAs as well as POWs. Hanoi had no obligation to account for the missing in Laos.

Response: False. In the first place, Hanoi has never questioned its obligation to account for the missing throughout Indochina. Instead, North Vietnamese officials cynically claimed that the task was difficult and that they were doing all they could. Additionally, a close examination of the exchange of messages in October 1972 disproves this allegation. In its message of October 21, 1972, the U.S. stated that it needed an assurance from the North Vietnamese that "the provision in the general agreement for verification of those U.S. military men and civilians considered missing in action will be applied also in Laos and Cambodia." In its reply dated October 22, Hanoi stated that it would "do its utmost to come to an agreement with its allies with a view of finding a satisfactory solution to the questions with which the United States is concerned." Since question of accounting for MIAs in Laos and Cambodia was obviously one with which the U.S. was concerned (as the U.S. had stated the previous day), the statement satisfied the U.S. request. Hanoi also stated that "the DRV side will carry out, without any change, what it has declared to the U.S. side."

THE SIDE UNDERSTANDING ON LAOS AND CAMBODIA

Allegation No. 3: U.S. negotiators made a major concession in agreeing to cover U.S. POWs in Laos and Cambodia in an informal side understanding rather than in the formal agreement.

Response: False. The U.S. concern was not whether POW/MIA issues would be covered in any particular agreement, but whether it would be covered by any agreement between the parties at all. From beginning to end, the U.S. negotiators insisted categorically that the North Vietnamese agree to release and account for all U.S. POWs and MIAs throughout Indochina. To address North Vietnam's insistent position that it did not control its allies in Laos and Cambodia and because we did not want to legitimize North Vietnam's control over the governments of Laos and Cambodia, we ultimately agreed to have the issue covered by verbal assurances and a side understanding. In the end, the U.S. side got what it wanted—firm guarantees regarding U.S. POWs and MIAs throughout Indochina.

LINKAGE OF RECONSTRUCTION AID AND RELEASE OF POWS

Allegation No. 4: Hanoi linked the issues of reconstruction aid and return of the POWs/accounting for MIAs. The U.S. inadvertently strengthened this linkage in the North Vietnamese mind by conditioning the delivery of the Nixon letter upon delivery of the Laos list. When the U.S. ultimately did not deliver reconstruction aid, Hanoi felt justified in not complying with the POW/MIA provisions.

Response: The U.S. side was very careful throughout the course of the negotiation of the Paris Peace Accords to assure that there was never a linkage between actual release of our POWs and the actual delivery of reconstruction aid. We did not see a problem, however, in using the highly conditional Nixon letter about future aid as leverage to obtain the lists when or shortly after the agreements were signed. Surely, no one would suggest that, with hundreds of POW families clamoring for information about their missing men, we should have delivered the Nixon letter without demanding the prisoner list, or that we should not have delivered such a letter.

Whether or not the North Vietnamese considered the two issues to be linked in their own minds, Hanoi did not cite the U.S. failure to provide reconstruction assistance as the reason for its refusal to provide an accounting until 1975. The Montgomery Committee examined this issue in detail and concluded:

"the fact is the Vietnamese did not begin to link Articles 8(b) and 21 until well after North Vietnamese military forces overran the South in April 1975. Then, and only then when their drive to the south had been completed in gross violation of Paris Agreement, did they begin to link these two issues and begin to make overtures of bargaining and accounting for American reconstruction aid, claiming a binding obligation of the Paris Peace Agreement still existed."

In any event, Hanoi has finally begun to provide information about U.S. MIAs without any demands for U.S. economic aid.

SUSPENSION OF TROOP WITHDRAWAL IN MARCH 1973

Allegation No. 5: In late March 1973, Admiral Moorer ordered a suspension in troop withdrawals until Hanoi provided information about the final group of U.S. POWs to be released, including those in Laos, but then, on White House instructions, reversed his orders and completed the troop withdrawal despite the fact that Hanoi had not provided any information about the more than 300 U.S. MIAs in Laos. The U.S. "gave in." We "completed our troop withdrawal without insisting that the Pathet Lao give us our prisoners back."

Response: Although Dr. Kissinger was on vacation during this period and has no specific recollection of this incident, it appears that the dispute in March was not over the fate of the 300 missing Americans in Laos, about whom the U.S. Government had no current information, but rather was over whether Hanoi would release the nine known POWs listed on the February 1, 1973 list. After a ten day impasse during which time Hanoi initially denied that it was responsible for the release of the nine POWs on the list, the Pathet Lao announced that the nine would be released and President Nixon ordered the withdrawals to resume.[1] Thus, the impasse was resolved because the Pathet Lao agreed to release the nine known prisoners in Laos, not because the U.S. Government decided to declare the remaining MIAs in Laos to be dead.

The minutes of the March 16, 1973 WSAG Committee make clear that Admiral Moorer's March 22 cable simply reflected the execution of Administration policy. The Committee had agreed that "U.S. troops in the third tranche who are still in Vietnam will not be withdrawn until the third tranche of POWs have been released. The withdrawal of the remainder of the troops will not begin until we have received the list of the last group of POWs, and the withdrawal will not be completed until all of our POWs, including those in Laos, have been released."

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[1]See, e.g., New York Times, March 24, 1973 ("the dispute centered on the United States demand for the release . . . of nine Americans held by the Pathet Lao in Laos") (also noting that U.S. officials had told the North Vietnamese on March 22 that the U.S. troop withdrawal was contingent upon receipt of a list of all U.S. POWs, including those held in Laos); New York Times, March 26, 1973 ("the deadlock centers on the United States demand that nine American captives of the Pathet Lao in Laos be freed . . ."); New York Times, March 26, 1973 (reporting that President Nixon had ordered U.S. forces to stay in South Vietnam until the issue of the nine American captives was resolved); New York Times, March 27, 1973 (reporting that President Nixon had ordered resumption of the troop withdrawal after the Pathet Lao agreed to release the nine American POWs in Laos).

These were precisely the instructions articulated in Admiral Moorer's cable of March 22 and in the letter delivered by General Wickham to the North Vietnamese the same day.[2] In addition, General Scowcroft's cable to Colonel Guay dated March 20, 1973 emphasized that the U.S. Government's principal concern was to ensure that Hanoi recognized, as a legal matter, its obligation under the Paris Peace Accords to release U.S. POWs in Laos. Scowcroft's cable mentions as an additional issue the adequacy of the February 1 list, but does not condition U.S. withdrawal upon a resolution of the question.

ADEQUACY OF ADMINISTRATION DISCLOSURES TO CONGRESS AND THE AMERICAN PEOPLE

Allegation No. 6: After March 29, the Administration failed to disclose to Congress and the American people evidence that U.S. POWs were still alive in Vietnam and Laos. Senator Kerry has said that "Information was withheld from the American people" and that "The Administration did not level with the American people." The Eagleburger Memorandum and Godley cables are alleged to be the "smoking guns" proving that U.S. officials knew that U.S. POWs were alive in Laos but did not tell the American people.

Response: False. Administration officials repeatedly stated publicly and testified before Congress that they did not consider Hanoi's accounting for U.S. servicemen to be complete. Moreover, all of the evidence cited in the Eagleburger Memorandum and Godley cables—statements by Lao officials, the fact that a number of men had been known to have been captured alive, and the statistical inadequacy of the February 1 list—was on the public record and well known to Congress as well as to the MIA families. Dr. Kissinger had presented essentially this same evidence to the North Vietnamese on his trip to Hanoi in February 1973. The Administration disclosed all credible information to Congress and the MIA families.

DID THE ADMINISTRATION REVEAL SPECIFIC NAMES?

Allegation No. 7: The Administration did not tell Congress and the American people that specific men whom it believed to be POWs—e.g., Dodge, Hrdlicka—did not return. Senator Kerry has said that "We have not found one document, one conversation, one debate, one Congressional Record statement, not one, pertaining to real individuals who did not come home. Not one."

Response: False. Roger Shields and Frank Sieverts testified before the House Foreign Affairs and Senate Foreign Relations Committees on several occasions in 1973 and 1974 about the approximately 80 cases of men who were known to have been captured alive but who did not return. The famous discrepancy cases of Commander Dodge, Colonel Hrdlicka, and Donald Sparks, among others, were referred to repeatedly by Administration officials and were well known to Congress and to the American people.

On May 31, 1973, Roger Shields told the House Foreign Affairs Committee that "As for those who are thought to have been captured alive but who have not been returned, let me say that this is perhaps the most agonizing and frustrating issue of all. These are the cases of men who were seen on the ground of whose pictures were released subsequent to capture but who, for one reason or another, have not returned and for who the other side has yet to provide a satisfactory explanation."

On December 5, Frank Sieverts told the House Foreign Affairs Committee that "We have called particular attention to cases of men who were previously acknowledged as captured in Laos, or for whom there are indications that they survived shootdowns. Two of the most obvious cases are Air Force Lieutenant Colonel David Hrdlicka, whose capture May 18, 1965 was openly confirmed by the Pathet Lao, and the American civilian, Eugene Drebruin, of Air America, also confirmed as a prisoner following his capture September 5, 1963, who is known to survive as recently as 1966. We continued to hope that lists and information we provided will help convince the LPF to provide additional information on our missing men."

On December 5, Roger Shields told the House Foreign Affairs Committee that "We have information that shortly after these men became missing, were prisoners in the case of Lt. Col. Hrdlicka and Commander Dodge, that some of them survived the initial incident and were indeed captured. In most cases, this goes back a number of years, 1965–1966, and we have heard nothing since that time. The most we can say today is that these men were alive, some definitely captured, and the other side knows what happened to them. If the men are not alive today, we certainly should receive information about what happened. If they are dead, we should receive the remains."

THE CURRENT CAPTURED LISTS

Allegation No. 8: The Administration did not disclose to Congress or to the American people that it continued to list between 81 and 67 men as "current captured" after Operation Homecoming.

Response: False. Frank Sieverts and Roger Shields testified on numerous occasions that the Defense Department continued to carry a number of men as prisoners of war. Indeed, the very same DOD Comptroller's report of March 31, 1973 listing 81 servicemen as "current captured," which has been alluded to as the "smoking gun," was printed in the Congressional Record on June 4, 1973. Roger Shields explained that the fact that men continued to be listed as prisoners of war did not mean that the government "knew" them to be alive: "The most we can say today is that those men were alive, some definitely captured, and the other side knows what happened to them." According to Roger Shields, the fact that certain men continued to be listed as prisoners of war was specifically disclosed to the affected family members.

ADEQUACY OF EFFORTS TO OBTAIN AN ACCOUNTING AFTER OPERATION HOMECOMING

Allegation No. 9: After Operation Homecoming, the Administration ceased its efforts to bring the POWs home. The "mood" changed. Senator Kerry has said that "Once the war was over, it didn't seem to matter to get them back anymore." Senator Kerry has suggested that the reason for the Administration's failure to take action on the POW issue in 1973 was that the Presidency was "crumbling" and that the Administration needed to put the Vietnam War behind it.

Response: False. The Watergate incident did not affect the commitment or the effort of the U.S. Administration to achieve a full accounting for U.S. MIAs in Indochina. Both the 1973–1974 hearings and the Montgomery Committee hearings in 1975–1976 chronicle the U.S. government's persistent efforts to obtain a full accounting for U.S. MIAs after Operation Homecoming. The Montgomery Committee found that:

"After the war, when the provisions for gaining an accounting failed to be followed, the State Department tried other means to achieve that end. It tried government to government appeals, demands, and protests. It enlisted the assistance of international humanitarian organizations, sought the aid and support of third party nations and the pressure of world opinion. *That the results proved less effective than hoped for and desired cannot be attributed to lack of effort.* Critical factors were beyond American control, including the enemy's general perception of humanitarian obligations and specific application of humanitarian principles."

The Montgomery Committee specifically examined the charge that the State Department did not attach sufficient priority to obtaining an accounting for the missing, a charge the Committee noted drew "its credibility from the widespread distrust of government officials generated by the War itself and by the Watergate affair." The Montgomery Committee concluded:

"Plausible at first glance, the charge of State Department disinterest appears far less credible after closer examination. In fact, rather than a valid charge that provides insight into the failure to gain an accounting, it appears as a symptom of the deep dissatisfaction and frustration that the failure to gain an accounting, a frustration vented on the State Department because of the State's responsibility to gain that accounting. It is doubtful that State could have gained an accounting by being more insistent. The main problem was not that gaining an accounting was low on the State Department's list of priorities. The primary reason the American people have not gained an accounting . . . was the recalcitrance and the intransigence of the Indochinese communists leaders."

WHY DIDN'T WE RESUME MILITARY OPERATIONS?

Allegation No. 10: The Administration made the "hard decision" not to resume military operations in Vietnam in order to get the POWs back because it did not believe it had the support of the American people.

Response: Dr. Kissinger has written that in light of Hanoi's massive violations of the Peace Accords, including those covering POWs and MIAs, he favored resuming bombing in late March 1973. However, President Nixon decided not to do so then because he wanted to be sure he first got back all the POWs on Vietnam's lists. Then the President decided to try one more negotiating session with Hanoi over their violations. By the time this took place in mid-May, Congressional pressures against further military action had reached a crescendo. Congress itself specifically removed the option of using military operations when on May 31 it voted to bar them *even if* Hanoi was not cooperating on MIAs and POWs. It can scarcely be said that it was the Administration which "decided" not to resume military operations.

THE STATEMENT THAT ALL THE MIA'S ARE DEAD

Allegation No. 11: The Administration explicitly or implicitly stated to the American people that all of the MIAs were "dead."

Response: False. Although this perception is widely held, we have been unable to find any public statement by an American official that all U.S. MIAs were dead. With respect to Mr. Clements' alleged private statement to Mr. Shields, Mr. Clements has denied making the statement. Administration officials repeatedly stated that they had "no indication" that any U.S. servicemen were still alive after Operation Homecoming, but they did not state that they were dead. The 1973–1974 hearings make clear that Administration officials repeatedly left open the possibility that American servicemen might still be alive in Indochina.

[2]See New York Times, March 24, 1973.

NO INDICATION THAT ANYONE IS ALIVE

Allegation No. 12: Rather than saying that "we have no indication that anyone is alive," Senator Kerry has said that the Administration should have told Congress and the American people that there were a number of servicemen who were last known to be alive, whom we continue to list as captured, and whom we are determined to get information about.

Response: This is *exactly* what Frank Sieverts and Roger Shields told Congress and the American people. Shields and Sieverts repeatedly stated that the U.S. government was dissatisfied with the accounting for its missing, particularly with respect to those men who were known to have been alive in captivity.

For example, on December 5, 1973, Roger Shields told the House Foreign Affairs Committee that "We have information that shortly after these men became missing, were prisoners in the case of Lt. Col. Hrdlicka and Commander Dodge, that some of them survived the initial incident and were indeed captured. In most cases, this goes back a number of years, 1965–1966, and we have heard nothing since that time. The most we can say today is that these men were alive, some definitely captured, and the other side knows what happened to them. If the men are not alive today, we certainly should receive information about what happened. If they are dead, we should receive the remains."

WOULD CONGRESS HAVE TAKEN ACTION?

Allegation No. 13: If Congress had been aware that the Administration believed that specific people had been left behind, it would have taken some action.

Response: The 1973–1974 hearings clearly demonstrate that Congress was well aware that Hanoi had not provided a full accounting for U.S. missing in action and that there were a number of specific individuals who were known to have been captured alive but who had not returned. Although both houses of Congress ultimately passed resolutions calling for a better accounting for the missing, on May 31, 1973 the Senate voted down Senator Dole's amendment that would have authorized the President to continue to use force in order to gain an accounting for U.S. MIAs. Senator Dole presented a name-by-name list of all U.S. servicemen unaccounted for in Indochina after Operation Homecoming and in "missing or captured status." Senator Dole also presented to the Senate the entire statement made that same day by Roger Shields to the House Foreign Affairs Committee, which specifically referred to the continuing problem of those thought to have been captured alive, but who had not returned. Accordingly, it cannot be said that Congress was unaware of the possibility that American POWs might still be alive in Indochina.

MILLER, CASSIDY, LARROCA & LEWIN,
Washington, DC, December 30, 1992.

U.S. SENATE,
Select Committee on POW/MIA Affairs, Hart Senate Office Building, Washington, DC.

DEAR MR. CODINHA: Enclosed is the memorandum response of former President Richard Nixon to the questions asked by the Senate Select Committee on POW/MIA Affairs.

Sincerely yours,

HERBERT J. MILLER, Jr.

WOODCLIFF LAKE, NJ,
December 30, 1992.

Mr. HERBERT J. MILLER, Jr.,
Miller, Cassidy, Larroca & Lewin, Washington, DC.

DEAR JACK: I am enclosing my memorandum in response to the Select Committee on POW/MIA Affairs' request for information dated December 18, 1992. Please deliver the attached memorandum to the Committee.

I again wish to emphasize that the questions cover in detail matters that occurred eighteen to twenty years ago and that some of them do reflect a predetermined viewpoint.

Since I only returned from a trip outside the country on December 23rd and, obviously, have not had an opportunity to review the myriad of documents involved in this matter, I cannot be more precise.

Sincerely,

RICHARD NIXON.

MEMORANDUM OF RICHARD M. NIXON IN RESPONSE TO THE COMMITTEE'S QUESTIONS OF DECEMBER 18, 1992

As the members of the committee are aware, Dr. Kissinger had primary responsibility for conducting negotiations to end the war we inherited from the Kennedy/Johnson Administration and to obtain the release of our POWs and an accounting for those missing in action. On the basis of that direct involvement, Dr. Kissinger already has addressed in his testimony to the committee most of the issues raised in the questions you have submitted to me. I will not elaborate on his answers. I will, however, respond to questions that he did not cover or that involve my personal assessment of the POW/MIA issue.

Question 1: Dr. Kissinger addressed this question in detail in his testimony before the committee. I have nothing further to add except to observe that throughout the negotiations which led up to the Paris Peace Agreements and thereafter my position was that the return of our POWs and accounting for those missing in action was the highest priority. The testimony of Dr. Kissinger and General Haig clearly demonstrates that key members of my White House staff shared that conviction and did everything possible to attain that objective in the negotiations with the North Vietnamese.

Question 2: Dr. Kissinger has testified at length on the issues raised in this question. I should note, however, that the distinction the committee draws between "formal agreements" and "informal side understandings" is meaningless in the context of the committee's question. International agreements frequently include non-public provisions that are just as binding as the public provisions, but that for domestic public opinion or other reasons one party or the other is unwilling to make public. In this case, it was North Vietnam's public position that Communist-dominated areas of Laos and Cambodia were not under North Vietnamese control. We acceded to Hanoi's request that the formal accords not address prisoners in Laos and Cambodia because we did not believe that it was in the U.S. interest to codify Hanoi's right to intervene in the affairs of Laos and Cambodia. It was also obviously better to have a separate agreement with North Vietnam that committed Hanoi to the return of POWs and MIAs in Laos and Cambodia than to have no agreement at all. The North Vietnamese never contested the fact that this separate agreement obligated them on POWs and MIAs throughout Indochina.

I would add that I had no confidence whatever that the "side agreement" by itself would result either in the accounting of our missing or in the repatriation of live U.S. POWs held in Laos and Cambodia with the 60-day period set forth in Article 8 of the Accords for the release of POWs held in Vietnam. I never relied on the words of the North Vietnamese then or now.

Throughout the war, we found that the North Vietnamese responded only to force or threats of force. Our December 1972 bombing, which was so violently criticized by some of the members of this committee, was what broke the logjam in the negotiations. As one of the POWs told me when he returned, "When we heard the bombs falling we knew we were on the way home." Admiral James Stockdale, who was awarded the Medal of Honor when he returned, later described the scene when the prisoners heard the explosions as the bombs began hitting their targets. He wrote, "Cheers started to go up all over the cell blocks of that downtown prison. This was a new reality for Hanoi. One look at any Vietnamese, hopelessness, remorse, fear. The shock was there. Our enemy's will was broken." Our POWs knew then that they were coming home, even if our critics in the Congress and many of the nation's editorial writers did not.

As it became clear to the North Vietnamese that the Congress would not permit a resumption of the bombing to enforce the Paris Accords, their incentive for complying with the agreement regarding MIA's and POW's as well as other provisions was completely destroyed. The return of all our POWs and an accounting of all our MIAs was difficult to achieve because of the intransigence of the North Vietnamese and the substantial sentiment in the country and in Congress for an unconditional withdrawal from Vietnam in advance of any North Vietnamese commitment to return our prisoners and account for our missing. Indeed, in the midst of the final negotiations of the agreements in early January 1973, the House and Senate Democratic Caucuses both voted to cut off immediately U.S. combat activities in Indochina. I can only presume that those who urged such a course of action naively believed that following a unilateral U.S. withdrawal the Vietnamese would voluntarily return our POWs and account for our missing.

The responsibility for denying to our Administration the means to force the North Vietnamese to comply with the agreements concerning the accounting for MIAs lies squarely on those who opposed the use of military force to bring the war to a conclusion and who later sabotaged our efforts to enforce the peace agreement by drastically reducing American aid to South Vietnam and prohibiting the resumption of the bombing in order to enforce the Accords.

Question 3: Dr. Kissinger has responded to this question at length.

I note, however, that the committee's questions appear to ignore completely the realities of international negotiation, especially negotiation with the North Vietnamese. Adversaries in general, and the North Vietnamese in particular, are not in the habit of giving the other side everything it wants. We asked for an assurance, and while the response may not now appear as "definite and specific" as this committee sitting twenty years later would like, we did receive an assurance that we thought was the best obtainable under the circumstances. In the negotiation of the Accords, the North Vietnamese never questioned that the separate agreement obliged them to release our POWs and to account for the missing throughout Indochina. Therefore, whether a more precise

form or wording of these terms could have been negotiated or would have led to greater North Vietnamese cooperation is beside the point.

Question 4: In response to this question, it must be borne in mind that the North Vietnamese demanded that the United States agree to pay reparations for war damages. We categorically rejected this demand. We agreed to provide reconstruction aid to North Vietnam *provided* they complied with the terms of the peace agreement, including but not limited to the return of POWs and the accounting for all missing in action.

The rationale for reconstruction aid was similar to the justification we gave for providing billions of dollars of aid to our former enemies in Japan and Germany at the end of World War II. President Johnson had previously promised that at the end of the war the United States would provide reconstruction aid. We believed that such aid would serve not only the interests of the people of North Vietnam and South Vietnam, but also our own interests in creating a more peaceful environment in Southeast Asia.

We consistently and deliberately refused to link the demand for reparations to the release of POWs and accounting for MIAs and other provisions of the peace agreement because to do so would mean that we implicitly were accepting the concept of reparations.

That was the reason why reconstruction aid was raised in a confidential letter rather than in the peace agreement. Since the North Vietnamese did not comply with the peace agreement, including the separate agreement with regard to MIAs, the question of reconstruction aid became moot.

At the present time, to normalize relations with the government of Vietnam and to provide trade or other aid would be a tragic mistake. It is astonishing to me that many, including some members of this committee, have so effusively praised Hanoi for taking steps today to facilitate resolution of the MIA cases that any humane government would have taken twenty years ago. The North Vietnamese continue to torture the families of MIAs by disclosing only as many bits and pieces of bodies, clothing, and other effects as their diplomatic campaign for normalization requires.

Even if they completely satisfy our demands on this issue, normalization should not go forward because of a profoundly important issue that has been completely ignored by most of the members of Congress and the media who advocate normalization: Hanoi's continuing massive abuse of those in South Vietnam who were our allies. Hundreds of thousands—including the children and grandchildren of many who served in South Vietnam's government and armed services—are treated like second-class citizens. Until Hanoi not only fully accounts for the MIAs but also ceases its brutal treatment of those who were aligned with the U.S. during the war, and until North Vietnam complies with the other terms of the Paris Peace Accords, it would be a diplomatic travesty and a human tragedy to go forward with normalization.

Question 5: Dr. Kissinger has covered this question in his testimony, and I have nothing to add.

Question 6: Dr. Kissinger has covered this question in his testimony, and I have nothing to add.

Question 7: Dr. Kissinger has covered this question in his testimony. We had no way of actually knowing whether the Laos POW list was complete or not. Although everyone was aware of the possibility that the release was incomplete, I had no personal knowledge that any U.S. serviceman still alive had been kept behind. Without better evidence, more than suspicion, we had no options other than to continue to demand a better accounting from Hanoi in the strongest possible terms. Congress was unwilling to support a resumption of military operations which would involve the loss of additional American lives simply to resolve this issue. Indeed, Congress soon tied our hands by cutting off funding for military operations in Indochina and specifically rejected a Republican-supported amendment offered by Senator Dole that would have allowed the resumption of force if the President found that the North Vietnamese had violated their obligation to make a full accounting for the missing.

Question 8: Dr. Kissinger has covered this question in his testimony, and I have nothing to add.

Question 9: Dr. Kissinger has covered this question in his testimony, and I have nothing to add except to observe that in my speech of March 29, I strongly expressed my concern with regard to the accounting for "all missing in action in Indochina, the provisions with regard to Laos and Cambodia", and other provisions of the agreement. I stated that we shall insist that North Vietnam comply with this agreement, and "the leaders of North Vietnam should have no doubt as to the consequences if they fail to comply with the agreement." In view of my having ordered the December bombing in 1972 despite the enormous political risks, the North Vietnamese could not have misread this implied threat. Unfortunately, the actions of many members of Congress, including some on this committee, in limiting my power to enforce the agreement by a resumption of bombing made such threats, as the Chinese would put it, "an empty cannon."

Question 10: Dr. Kissinger has covered this question in his testimony. I do not recall directing Admiral Moorer to send this cable. It appears to be a statement of our policy at the time, namely that we would not commence the final phase of our withdrawal until we received a complete list of the last group of POWs to be released, including those from Laos. We had interrupted our troop withdrawal on several previous occasions until we received lists of our POWs to be released. In this case, we apparently interrupted our withdrawal again because Hanoi had suddenly disclaimed responsibility for releasing U.S. POWs in Laos. As far as I can recall, I do not believe this cable was based on any knowledge that there were POWs held in Laos in addition to the nine we were aware of at that point.

Question 11: Dr. Kissinger has covered this question in his testimony. Like the earlier cable, the March 23 cable appears to be a restatement of our policy, but in the affirmative rather than the negative, namely that we would resume our withdrawal provided we received a list of POWs to be released, including the nine from Laos. I do not recall that we changed our position on this issue.

Question 12: As I have already indicated, the only option that I believed would affect the North Vietnamese was the use of military force. The Congress denied me that option. The suggestion by various members of this committee that the Congress would have approved a resumption of the bombing is ludicrous supposition. The overwhelming consensus among those who opposed the use of force was summed up by Senator Ted Kennedy when he observed, "If we really want peace in Cambodia and cease fire agreements for all of Indochina, then we should be sending our diplomats to help negotiate these arrangements instead of sending our B-52s to bomb." We tried on every front to convince the North Vietnamese that they should comply with the peace agreement as well as the separate agreement on POWs and MIAs in Laos and Cambodia by diplomacy. In view of the outrage of our critics when we resumed the bombing in December 1972—the very action that led the North Vietnamese to accept the peace agreement and to release our POWs—it is highly ironic and cynically irresponsible for anyone to insist twenty years later that we should have resumed the bombing in order to get the North Vietnamese to give a full accounting for MIAs and that the Congress would have approved it.

As I pointed out in my book *No More Vietnams*, "Antiwar senators and congressmen launched a frontal assault on our policy in May and June [1973]. Initially, their target was legislating a halt to our bombing in Cambodia. But soon they raised their sights to a prohibition of all direct and indirect American military actions in or around Indochina. They also sought to forbid the sending of reconstruction aid to North Vietnam. When they succeeded with both efforts, Congress had withdrawn both the carrots and the sticks built into the agreement. Hanoi as a result had no reason to comply with its terms."

Question 13: I am astonished that the committee's question to me takes my statement with regard to POWs on March 29 out of its full context. On the other hand, I am reminded that General Haig too found it necessary to call to the Chairman's attention that my statement, "All of our American POWs are on their way home," was directly followed by this paragraph:

"There are still some problem areas. The provisions of the agreement requiring an accounting for all missing in action in Indochina, the provisions with regard to Laos and Cambodia, the provisions prohibiting infiltration from North Vietnam into South Vietnam have not been complied with. We have and will continue to comply with the agreement. We shall insist that North Vietnam comply with the agreement. And the leaders of North Vietnam should have no doubt as to the consequences if they fail to comply with the agreement."

I firmly believe that the committee's handling of my statement has been totally unprofessional, calculatedly attempting to create the impression that Dr. Kissinger and I and other members of the Administration knowingly presented false information with regard to the return of all of our POWs. As Dr. Kissinger has testified, to leave the impression that any President and his associates would deliberately leave behind live POWs was a lie. For members of the committee to create such an impression, even for partisan political reasons, is totally unjustifiable. But to convey the impression to the hundreds of families of MIAs that an American President deliberately left behind their loved ones and that some of them might still be alive can only be described as obscene.

The committee owes to the MIA families and to history an honest statement of the facts with regard to POWs and MIAs. Throughout America's military history, casualties are divided into three categories—those known to be killed in action; those known to be and acknowledged by the enemy to be prisoners of war; and all others who are classified as missing in action. My statement on March 29 that all of our POWs were on the way home was true to my knowledge then and, in view of what I have seen of the com-

mittee's work to date, is true now. Further, the fact that I was not satisfied with the accounting we received for MIAs was true then and is true now. The inclusion of my full answer in this regard in the committee's report is owed not only to those in my Administration who worked tirelessly on this issue at a time many of our critics were sabotaging our peace efforts by denying us the power to enforce the peace agreement, but also, and above all, to the MIA families.

Question 14: It is my understanding that General Scowcroft and Mr. Shields have testified concerning the April 11, 1973, meeting. The suggestion in your questions that I pressured Mr. Shields with General Scowcroft present to announce there were no indications that live U.S. POWs remained in captivity in Indochina is insulting and untrue. My recollection is that I told Mr. Shields we had an equal obligation to find the facts concerning the MIAs as we did to secure the release of the POWs. I also conveyed to him my belief, which I still firmly hold, that it would have been unfair and a disservice to MIA families to raise false hopes without justification.

Question 15: Dr. Kissinger has addressed this question, and I have nothing to add except to emphasize that, as he has testified, we continued to hit the issue over and over again in the Kissinger negotiations with the North Vietnamese. The Dole Amendment that would have authorized use of force to bring about compliance with the Peace Accords was an indication of our continued interest in finding ways to maintain pressure on Hanoi to comply fully with the agreement.•

TRIBUTE TO KEN NAGEL

• Mr. DANFORTH. Mr. President, I rise to pay special tribute to a man who has given much to America. Ken Nagel of St. Peters, MO, a veteran of World War II, remembers the bombing of Pearl Harbor with the pride and clarity of one who was there.

The observance each December 7 of the anniversary is a special and unique occasion for Ken Nagel. Sharing the pride of millions of other Americans, Mr. Nagel was able to call forth the recollections shared by a very few. On that day, he was aboard the USS *Seagull*, a Navy vessel stationed within 3 miles of Pearl Harbor, at Lahaina Roads on Maui Island.

On December 7, he was a witness to history. He saw one of those moments that shape the destines of people around the globe. He can testify to the tragedy that became at last a triumph for America and for America's great and deathless ideals.

As one who was a youngster when Ken Nagel and so many other brave Americans were serving the cause of freedom and democracy, I am pleased that he takes a special interest in sharing his knowledge and recollections with those who know him.

Such willingness to share history with others is a vital way of preserving undimmed the memory of December 7, and of instilling in people today a fuller understanding of the fateful importance of those years of struggle and, ultimately, of victory in the 1940's.•

CENTENNIAL OF WESTERN NEW MEXICO UNIVERSITY

• Mr. BINGAMAN. Mr. President, I rise today to recognize Western New Mexico University's 100 years of distinguished service to the people of New Mexico. Chartered on February 11, 1893, to fulfill the need for teachers to educate the children of local miners and prospectors, the university has expanded its original mission as a teacher training college to become one of the Southwest's outstanding educational institutions. This important landmark provides me the opportunity to offer well-deserved praise to the university and enthusiastic encouragement as it enters its second century of service.

Proudly, I point to the record Western New Mexico University has built since its founding in Silver City by the 30th Territorial Legislature of New Mexico. Student enrollment has grown from 40 students in the inaugural year to more than 2,500 students today. Wonderful ethnic diversity lends additional strength to the cultural and educational experience at Western. This no doubt contributes to the admirable job placement rate of Western New Mexico University graduates—over 86 percent annually.

The university is constantly searching for new ways to enhance and meet the present and future needs of southwestern New Mexico. Examples of this include the recent national certification of the university's child development program. The nursing program expects similar accreditation within months. Augmenting these programs will be a new occupational therapy assistant's program. These additions are in keeping with the spirit of innovation and growth exhibited by the university's founders.

My first impressions of Western were formed in the kindergarten class I attended on the campus in the old training school in 1947. In later years, I came to know each path and tree throughout the campus. I would ride to Fleming Hall each morning with my father and spend time either exploring the science classrooms then located in the basement or studying in the library upstairs. The university was a place to swim, a track to run on in high school, and a library to do research for term papers.

The university is to me what I believe it is Silver City, Grant County, and to all who value it—a resource, a place for enriching life and expanding understanding.

Both of my parents graduated from Western, and my father made teaching at this university his life's work. Teaching is a noble calling. It has been said that the most important work that any of us do is teaching our children. If so, then teaching those who will teach our children must rank near the top of human endeavors as well.

As I age, I frequently find myself impressed with the wisdom and vision of those who came before. That wisdom and vision were in abundance in 1893 when the territorial Governor and legislature founded New Mexico Normal School at Silver City. It was the act of builders—people of great hopes for the future and determination to see those hopes become reality.

Our community, our State, and Nation are stronger, wiser, and more generous because of the learning that has occurred at this place. One hundred years after its birth we need to reaffirm those great hopes. We need to recommit ourselves to the ideals that inspired them to found this university. We need to continue this journey.

"It is, sir, a small college—and yet there are those who live it * * *." Daniel Webster eloquently spoke those words to the Supreme Court in 1818 in defense of Dartmouth College. Those same words capture my thoughts about Western New Mexico University.•

THE NATIONAL GOVERNOR'S ASSOCIATION'S ENDORSEMENT OF WORK FORCE DEVELOPMENT

• Mr. HATFIELD. Mr. President, yesterday, the National Governor's Association endorsed a resolution calling for the Federal Government to make fundamental changes to our current strategies for delivering education and training services in order to build a world-class work force. According to the NGA's resolution, in order to compete in a global economy, the United States must enhance efforts to build partnerships among business, labor, education, and government, and make work force development an integral component of national, State, and local economic development policies.

As a sponsor of the High Skills Competitive Work Force Act of 1992, Senator KENNEDY and I attempted to address many of the problems our country faces in work force development. I would like to commend the Governor's Association and I look forward to working with Senators KENNEDY and KASSEBAUM with the hope that we can craft a revised legislative vehicle which will be brought before this body during the first session of the 103d Congress.•

ORDERS FOR TOMORROW

Mr. MITCHELL. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in recess until 9 a.m., Thursday, February 4, that following the prayer, the Journal of proceedings be approved to date and the time for the two leaders reserved for their use later in the day; that there then be a period of morning business, not to extend beyond 11 a.m., with Senators permitted to speak therein for up to 10 minutes

each; with the exception of the following Senators who are to be recognized in the order listed and time periods specified immediately following the Chair's announcement: Senator PRYOR for up to 30 minutes; Senator SIMON for up to 30 minutes; and Senator KASSEBAUM for up to 30 minutes; that at 11 a.m., the Senate resume consideration of S. 5, the family and medical leave bill.

The PRESIDING OFFICER. Without objection, it is so ordered.

RECESS UNTIL 9 A.M. TOMORROW

Mr. MITCHELL. Mr. President, if there is no further business to come before the Senate today, I now ask unanimous consent that the Senate stand in recess as previously ordered.

There being no objection, the Senate, at 7:53 p.m., recessed until Thursday, February, 4, 1993, at 9 a.m.

CONFIRMATIONS

Executive nominations confirmed by the Senate February 3, 1993:

DEPARTMENT OF VETERANS AFFAIRS

HERSHEL WAYNE GOBER, OF ARKANSAS, TO BE DEPUTY SECRETARY OF VETERANS AFFAIRS.

CENTRAL INTELLIGENCE

R. JAMES WOOLSEY, OF MARYLAND, TO BE DIRECTOR OF CENTRAL INTELLIGENCE.

THE ABOVE NOMINATIONS WERE APPROVED SUBJECT TO THE NOMINEES' COMMITMENT TO RESPOND TO REQUESTS TO APPEAR AND TESTIFY BEFORE ANY DULY CONSTITUTED COMMITTEE OF THE SENATE.